SC
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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1906.

No. 405.

VUKO PEROVICH, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE THIRD DIVISION OF THE TERRITORY OF ALASKA.

FILED SEPTEMBER 24, 1906.

(20370.)

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a UNITED STATES OF AMERICA,
Territory of Alaska, Third Judicial Division, ss:

I, Edward J. Stier, clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the following pages numbered consecutively from page 1 to page 431, inclusive, constitute a full, true, and complete copy and the whole thereof of the indictment, arraignment, plea, formation of jury, trial, verdict of jury, testimony, judgment and sentence, motions, orders, pleadings, journal entries, bill of exceptions, assignment of errors, and all proceedings whatsoever, as the same appear endorsed and on file in this office in the case of the United States *vs.* Vuko Perovich, docketed as criminal case No. 104 in this court.

In witness whereof I have hereunto set my hand and affixed the seal of the court, this 23rd day of August, A. D. 1906.

EDWARD J. STIER,
[SEAL.] *Clerk of the District Court, Territory of Alaska, Third Division.*
By E. A. HENDERSON,
Deputy.

1 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Presentment of indictment.

And now, to wit, July 18, 1905, came the grand jury in attendance at this court into open court, and the foreman thereof in their presence presents to the court an indictment wherein Vuko Perovich is charged with the crime of murder in the first degree, which indictment was accepted by the court and filed with the clerk.

(Endorsements:) Entered in Journal 3, page 553, July 18, 1905.

2 In the District Court of the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT. } No. 104. Indictment.

Vuko Perovich is accused by the grand jury of the Territory of Alaska, Third Division, by this indictment of the crime of murder in the first degree, committed as follows:

That Vuko Perovich, in the Territory of Alaska, Third Division thereof, and within the jurisdiction of this court, to wit, near the town of Fairbanks therein, on the 29th day of October, A. D. 1904, unlawfully, wilfully, feloniously, purposely, and of deliberate and premeditated malice killed one Jacob Jaconi by means unknown to the grand jury, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, in said division, the 17th day of July, A. D. 1905.

NATHAN V. HARLAN,
United States Attorney.

The following witnesses testified before the grand jury: John Stratton, Peter Vidovich, George Dreibelbis, Anton Bilis.

(Endorsements:) No. 104. Criminal. United States of America *vs.* Vuko Perovitch. Indictment charging the crime of murder in the first degree. A true bill. George B. Branch, foreman of the grand jury. Presented to the court by the foreman of the grand jury in open court in the presence of the grand jury and filed in the U. S. District Court, District of Alaska, Third Division, July 18, 1905. Edward J. Stier, clerk.

3 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Arraignment and plea.

And now, to wit, July 25, 1905, comes Geo. G. Perry, United States marshal for the Third Division of the Territory of Alaska, and brings the said Vuko Perovitch into open court. Then also comes N. V. Harlan, district attorney, for plaintiff, and Leroy Tozier, as attorney for defendant. And the said Vuko Perovitch being brought to the bar of the court here, and being first interrogated if the name by which he is named in the indictment found against him be not his true name, says his true name is Vuko Perovitch; and the said indictment being read to the defendant by the clerk of the court under the direction of the court, and the clerk having delivered to the defendant a copy of the said indictment and the endorsements thereon, including a list of the witnesses endorsed thereon, together with a list containing the names and residences of the trial jury summoned for this term of court, and a list of the names and residences of the witnesses proposed to be called to testify upon behalf of the United States upon the trial of this action, and it being demanded of him concerning the premises in said indictment specified whether he is guilty or not guilty of "murder in the first degree" as therein accused, defendant pleads that he is not guilty of the crime charged in this indictment.

(Endorsements:) Entered in Journal 3, page 592, July 25, 1905.

4 In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA *vs.* VUKO PEROVICH. } No. 104. List of witnesses in above case to be called on behalf of the prosecution.

1. Patrick Calvey.
2. William Lodge.
3. Robert Kane.
4. H. W. Giddings.
5. Mark Skorlich.
6. Mike Torotich.
7. Val. Diebold.
8. Joe Sica.
9. Peter Vidovich.
10. Dick Hearn.
11. L. B. Anderson.
12. John Haidukovich.
13. John Jalonene.
14. John Stratton.
15. A. B. Geho, M. D.
16. Ross.
17. M. R. Proebstel.
18. L. C. Hess.

19. Jack Buckley.
20. E. J. Stier.
21. Thomas Thornton.
22. G. N. Cassells, M. D.
23. Peter Jelich.
24. D. T. Roy.
25. John Pakeg.
26. John Miocevich.
27. C. Welch.
28. J. Osborne.
29. Anton Balish.
30. Philip Schuman.
31. Mrs. Miner Bruce.
32. J. B. Bradley.
33. Geo. Dreibelbis.
34. Cliff Welch.
35. Knud Johnson.

N. V. HARLAN,
U. S. District Attorney.

I hereby acknowledge service of above list of witnesses.

LEROY TOZIER,
Attorney for Defendant.

(Endorsements:) Filed in the District Court, Territory of Alaska, Third Division, July 26, 1905. E. J. Stier, clerk.

5 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT. } No. 104. Notice of additional witness.

To the above-named defendant and his authorized attorney, Leroy Tozier, esq., notice:

You and each of you are hereby notified that the United States has added an additional name to the list of witnesses who will be produced to give testimony on behalf of the United States in the trial of the action against Vuko Perovich, to wit: Thomas Haggerty.

NATHAN V. HARLAN,
United States Attorney.

(Endorsements:) Service of above accepted. Leroy Tozier, attorney for defendant. Filed in the District Court, Territory of Alaska, Third Division, July 18, 1905, E. J. Stier, clerk.

6 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order that jury be kept together and furnished with meals and lodging.

And now, to wit, July 31, 1905, the trial jury in this case being in formation and time for recess having arrived, it is ordered by the court that the trial jurors in this case be kept together during the progress of the trial in charge of two bailiffs. The U. S. marshal is hereby ordered to provide the jurors and bailiffs with suitable and sufficient food and lodging at the expense of the United States.

(Endorsements:) Entered in journal No. 3, page 612, July 31, 1905.

7 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted and the jury is incomplete.

Thereupon the court ordered the clerk to issue a writ of special venire to the U. S. marshal of this district and division, commanding him to summon from the body of the district 12 men qualified to sit as trial jurors in this court case, to be and appear in the court room forthwith.

(Endorsements:) Entered in court journal No. 3 at page 612, July 31, 1905.

8 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104.

Special venire.

To the United States Marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you that you summon from the body of the above division and district of Alaska twelve men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause, to report at the court-house within and for said district and division at the town of Fairbanks forthwith, the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon James Wickersham, judge of the above court, and the seal thereof, this 31st day of July, A. D. 19[0]5.

[SEAL.] EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

9 *Marshal's return on writ of special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

I hereby certify that I received the within special venire at 11 a. m. o'clock on the 31st day of July, 1905, and served the same in the division aforesaid on the 31st day of July by summoning the following-named persons in accordance therewith:

Dave Kolski, Chas. Rebhun, D. C. Stephens, M. McCauley, H. M.

Peck, Harry Cloes, Otis Rana, E. J. Jensen, Gilbert Anderson, A. T. Thomas, F. Lewis, L. A. Tolman.

Dated Fairbanks, Alaska, July 31, 1905.

GEO. G. PERRY,
U. S. Marshal.

By E. E. REYNOLDSON,
Deputy.

Entered Journal 3, page 613. July 31, 1905.

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3. No. 104. United States *vs.* Vuko Perovich. Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division, July 31, 1905. Edward J. Stier, clerk.

10 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31st, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted, and the jury is incomplete.

Thereupon the court ordered the clerk to issue a writ of special venire to the U. S. marshal of this district and division commanding him to summon from the body of the district 20 men qualified to sit as trial jurors in this court case, to be and appear in the court-room forthwith.

(Endorsements:) Entered in Court Journal No. 3, at page 613, July 31, 1905.

11 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104.

Special venire.

To the United States marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you that you summon from the body of the above division and district of Alaska twenty men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause to report at the court-house within and for said district and division at the town of Fairbanks, at forthwith o'clock, on the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon. James Wickersham, judge of the above court, and the seal thereof this 31st day of July, A. D. 1905.

[SEAL.]

EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

12 *Marshal's return on writ of special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss.

I hereby certify that I received the within special venire at 10.30 o'clock on the 31st day of July, 1905, and served the same in the division aforesaid on the 31st day of July, 1905, by summoning the following-named persons in accordance therewith:

W. Butler, J. A. Gerow, C. W. Bechtol, Tom Handel, D. Fairburn, W. W. Elliott, T. B. Boaman, M. A. Mahoney, F. Gerhardt, Karl Schaup, S. Cahn, John Clifford, Robert Haynes, J. Elamier, Jesse Noble, S. D. McIlroy, F. B. McDonald, T. C. Brown, F. H. Deal, and Thomas Morgan.

First ten named jurors summoned by E. E. Reynoldson, deputy; second named ten jurors summoned by Geo. Dreibelbis, deputy.

Dated Fairbanks, Alaska, July 31, 1905.

GEO. G. PERRY, *U. S. Marshal.*
By GEO. DRIEBELBIS, *Deputy.*
By E. E. REYNOLDSON, *Deputy.*

Entered Journal 3, page 613. July 31, 1905.

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3, No. 104. United States *vs.* Vuko Perovich. Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division, Jul. 31, 1905. Edward J. Stier, clerk.

13 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order excluding witnesses.

And now, to wit, July 31, 1905, this action being called for trial and the trial jury in formation. And at this time on motion of attorney for defendant that all witnesses on both sides be excluded from the court room.

It is hereby ordered that all witnesses be excluded from the court room during the formation of the trial jury.

(Endorsements:) Entered in Court Journal No. 3, at page 614, July 31, 1905.

14 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted and the jury is incomplete.

Thereupon the court ordered the clerk to issue a writ of special

venire to the U. S. marshal of this district and division commanding him to summon from the body of the district 12 men qualified to sit as trial jurors in this court case, to be and appear in the court room forthwith.

(Endorsements:) Entered in Court Journal No. 3, at page 614, July 31, 1905.

15 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES
vs.
VUKO PEROVICH. } No. 104

Special venire.

To the United States marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you, that you summon from the body of the above division and district of Alaska twelve men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause, to report at the court-house within and for said district and division at the town of Fairbanks, forthwith, on the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon. James Wickersham, judge of the above court, and the seal thereof this 31st day of July, A. D. 1905.

[SEAL.]

EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

16 *Marshal's return on writ of special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

I hereby certify that I received the within special venire at 2 o'clock on the 31st day of July, 1905, and served the same in the division aforesaid on the 31st day of July, by summoning the following-named persons in accordance therewith:

Robert Kennett, A. N. Anderson, C. F. Copeland, L. E. Robertson, Solly Spring, E. K. Peoples, Roy Rutherford, Robert Klein, Z. J. Jewett, Thomas Cole, Joseph Curby, F. D. Steele.

Dated Fairbanks, Alaska, July 31st, 1905.

GEO. G. PERRY,
U. S. Marshal.

By GEO. DREIBELBIS,
Deputy.

Entered, Journal 3, page 614. July 31, 1905.

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3. No. 104. United States *vs.* Vuko Perovich.

Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division, Jul. 31, 1905. E. J. Stier, clerk.

17 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31st, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted, and the jury is incomplete.

Thereupon the court ordered the clerk to issue a writ of special venire to the U. S. marshal of this district and division, commanding him to summon from the body of the district 10 men qualified to sit as trial jurors in this court case, to be and appear in the court room forthwith.

(Endorsements:) Entered in Court Journal No. 3, at page 615. July 31, 1905.

18 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104.

Special venire.

To the United States marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you that you summon from the body of the above division and district of Alaska ten men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause, to report at the court-house within and for said district and division at the town of Fairbanks forthwith, on the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon. James Wickersham, judge of the above court, and the seal thereof this 31st day of July, A. D. 1905.

[SEAL.] EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

19 *Marshal's return on special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

I hereby certify that I received the within special venire at 3 o'clock on the 31st day of July, 1905, and served the same in the

division aforesaid on the 31st day of July by summoning the following-named persons in accordance therewith:

B. Ogden, A. C. Rapp, C. J. Robinson, Harry Rachmil, Sam Heron, Chas. Beam, W. T. Jones, E. Kellar, J. M. Crawford, A. J. Fletcher.

Dated Fairbanks, Alaska, July 31, 1905.

GEO. G. PERRY, *U. S. Marshal.*
By GEO. DREIBELBIS, *Deputy.*

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3. No. 104. United States *vs.* Vuko Perovich. Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division, Jul. 31, 1905. E. J. Stier, Clerk.

20 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31st, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted, and the jury is incomplete.

Thereupon the court ordered the clerk to issue a writ of special venire to the U. S. marshal of this district and division commanding him to summon from the body of the district 10 men qualified to sit as trial jurors in this court case, to be and appear in the court room forthwith.

(Endorsements:) Entered in Court Journal No. 3, at page 615. July 31, 1905.

21 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104.

Special venire.

To the United States marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you that you summon from the body of the above division and district of Alaska ten men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause, to report at the court-house within and for said district and division at the town of Fairbanks forthwith, on the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon. James Wickersham, judge of the above court, and the seal thereof, this 31st day of July, A. D. 1905.

[SEAL.] EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

22 *Marshal's return on writ of special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

I hereby certify that I received the within special venire at 6 o'clock on the 31st day of July, 1906, and served the same in the division aforesaid on the 31st day of July by summoning the following-named persons in accordance therewith:

Fred Blewer, Neil Sorensen, J. W. McCormick, B. T. Prior, J. E. Coffer, Ed Hall, J. H. Vance, P. S. Whitney, Geo. Bennett, J. C. Collins.

First five names of jurors summoned by Geo. Dreibelbis. Second five names of jurors summoned by E. E. Reynoldson, deputy.

Dated Fairbanks, Alaska, July 31, 1905.

GEO. G. PERRY,
U. S. Marshal.
By GEO. DREIBELBIS,
Deputy.
By E. E. REYNOLDSON,
Deputy.

Entered Journal 3, page 616, July 31, 1905.

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3. No. 104. United States *vs.* Vuko Perovich, Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division. July 31, 1905. E. J. Stier, clerk.

23 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order for special venire for trial jurors.

And now, to wit, July 31, 1905, this action being on trial and the clerk having drawn from the trial jury box of the court the ballots containing the names of the jurors until they are exhausted, and the jury is incomplete,

Thereupon the court ordered the clerk to issue a writ of special venire to the U. S. marshal of this district and division commanding him to summon from the body of the district 4 men qualified to sit as trial jurors in this court case, to be and appear in the court room forthwith.

(Endorsements:) Entered in Court Journal No. 3, at page 616, July 31, 1905.

24 THE UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

In the United States District Court within and for said division and district.

UNITED STATES
vs.
VUKO PEROVICH. } No. 104.

Special venire.

To the United States marshal within and for the District of Alaska, Division No. 3, or to any of his deputies, greeting:

This is to command you that you summon from the body of the above division and district of Alaska four men qualified as jurors to serve as trial jurors in the trial of the above-entitled cause, to report at the court-house within and for said district and division at the town of Fairbanks forthwith on the 31st day of July, A. D. 1905.

And hereof fail not.

Witness the Hon. James Wickersham, judge of the above court, and the seal thereof this 31st day of July, A. D. 1905.

[SEAL.]

EDWARD J. STIER,
Clerk U. S. District Court for District of Alaska, Division No. 3.

25 *Marshal's return on writ of special venire.*

UNITED STATES OF AMERICA,
District of Alaska, Division No. 3, ss:

I hereby certify that I received the within special venire at 9 o'clock on the 31st day of July, 1905, and served the same in the division aforesaid on the 31st day of July by summoning the following-named persons in accordance therewith:

Robert Kelly, David Hull, J. H. Groves, W. H. Smith.

Dated Fairbanks, Alaska, July 31, 1905.

GEO. G. PERRY,
U. S. Marshal.

By GEO. DREIBELBIS,
Deputy.

Entered Journal 3, page 616. July 31, 1905.

(Endorsements:) In the U. S. District Court for the District of Alaska, Division No. 3. No. 104. United States *vs.* Vuko Perovich. Special venire. Filed in the U. S. District Court, District of Alaska, 3rd Division, July 31, 1905. E. J. Stier, clerk.

26 In the District Court, Territory of Alaska, Third Division.

UNITED STATES
vs.
VUKO PEROVICH. } Formation of trial jury and trial.

And now, to wit, July 31, 1905, this action was called for trial. Then appeared the plaintiff by N. V. Harlan, district attorney, and the defendant Vuko Perovich in person, with his attorney, Leroy Tozier, esq. Thereupon both parties announced themselves as ready to proceed with the trial. Thereupon the following-named twelve persons were duly drawn from the trial jury box from the panel of the trial jury regularly summoned and from the list of persons returned by the U. S. marshal by virtue of the several writs of special venire this day issued to him, namely: A. H. McNeer, F. B. McDonald, J. A. Gerow, Carl Schaupp, John Clifford, C. F. Copeland, E. R. Peoples, Sam Heron, W. T. Jones, George Bennett, B. T. Prior, and David Hull, and an oath administered to them and each of them that they would well and truly try the matter at issue between the plaintiff and the defendant and a true verdict give according to the law and the evidence as given them on the trial. And time for recess having arrived, the court cautioned the jury as to their conduct and ordered a recess. Thereupon the jury retired to the jury room in charge of two officers duly sworn, as provided by law.

(Endorsements:) Entered in Journal 3, at page 617, July 31, 1905.

27 In the District Court, Territory of Alaska, Third Division.

UNITED STATES
vs.
VUKO PEROVICH. } No. 104. Trial continued.

And now, to wit, August 1, 1905, comes Geo. G. Perry, U. S. marshal, and brings into open court the defendant, Vuko Perovich. Then appeared the attorneys for the defendant and the plaintiff, and announced themselves ready to continue the trial of this case. Then come into open court John Drake and J. F. Dillow, the bailiff in whose charge the trial jury in this cause has been kept since the recess declared on the preceding day, and bring with them the trial jury. Upon the call of the roll of the jury the following members answered to their names and were found present: A. H. McNeer, F. B. McDonald, J. A. Gerow, Carl Schaupp, John Clifford, C. F. Copeland, E. R. Peoples, Sam Heron, W. T. Jones, Geo. Bennett, B. T. Prior, and David Hull. Counsel for the United States then stated the case for the prosecution and briefly the evidence by which he expected to sustain it. Counsel for defense waived making a statement. Thereupon the trial proceeded. Mark Skerlich, Val. Diebold, John Pakege, John Miocevich, A. B. Geho, M. D., L. C. Hess, E. J. Stier, Joe Sica, Peter Vidovich, Dick Hearn, Robert Kane, Wm. Lodge, Geo. Dreibelbis, Wm. Lodge (recalled), L. B. Anderson, H. W. Giddings, and John D. Buckley were sworn and testified upon behalf of the plaintiff. And time for recess having arrived, the court cautioned the jury as to

their conduct, the same as on yesterday, and ordered a recess. Thereupon the jury retired to the jury room in charge of two officers duly sworn as provided by law.

(Endorsement:) Entered in journal 3, page 620, August 1, 1905.

28 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order appointing interpreter.

And now, to wit, August 2nd, 1905, it appearing to the court that this case can not proceed without an interpreter,

It is hereby ordered that Peter Vidovich be, and he is hereby, appointed an interpreter in this case.

(Endorsement:) Entered in journal 3, at page 624, August 2, 1905.

29 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Trial continued.

And now, to wit, August 2nd, 1905, comes Geo. G. Perry, U. S. marshal, and brings into open court the defendant, Vuko Perovich. Then appeared the attorneys for the plaintiff and the defendant and announced themselves ready to continue the trial of this case. Then came into open court John Drake and J. F. Dillow, the bailiffs in whose charge the trial jury in this cause has been kept since the recess declared on the preceding day, and bring with them the trial jury. Upon the call of the roll of the jury the following members answered to their names and were found present: A. H. McNeer, F. B. McDonald, John Clifford, J. A. Gerow, Carl Schaupp, C. F. Copeland, E. R. Peoples, Sam Hearn, W. T. Jones, George Bennett, B. T. Prior, and David Hull. Thereupon the trial proceeded. Mrs. Miner Bruce, John Jalonen, Anton Balish (interpreted by Peter Vidovich), John Stratton, John Haiduckovich (interpreted by Peter Vidovich), J. H. Ross, Mark Skorlish (recalled), Mike Torotich, Peter Vidovich (recalled), and George Dreibelbis (recalled) were sworn and testified upon behalf of the United States. Plaintiff rests. Thereupon counsel for defendant moves the court to instruct the jury to bring in a verdict of not guilty, which motion was denied. Exception, and exception allowed. Defendants' counsel moves that the evidence given by George Driebelbis as to all conversation held with the accused be stricken out, which was denied. Vuko Perovich was sworn and Peter Vidovich was called as interpreter. The prosecution at this time objects to an interpreter for Perovich on the grounds that the witness can speak sufficient English. Objection allowed and Peter
30 Vidovich ordered to stand aside. Whereupon Vuko Perovich testified upon his own behalf. And time for recess having arrived, the court cautioned the jury the same as on yesterday and

ordered a recess. Thereupon the jury retired to the jury room in charge of two officers duly sworn as provided by law.

(Endorsement:) Entered in journal 3, at page 625, August 2, 1905.

31 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order appointing interpreter.

And now, to wit, August 3, 1905, it appearing to the court that this case can not proceed without an interpreter,

It is hereby ordered that Peter Jelich be, and is hereby, appointed an interpreter in this case.

(Endorsement:) Entered in journal 3, at page 626, August 3, 1905.

32 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Trial concluded.

And now, to wit, August 3, 1905, comes Geo. G. Perry, U. S. marshal, and brings into open court the defendant, Vuko Perovich. Then appeared the attorneys for the plaintiff and the defendant and announced themselves ready to continue the trial of this cause. Then comes into open court John Drake and J. F. Dillow, the bailiffs in whose charge the trial jury in this cause has been kept since the recess declared on the preceding day, and bring with them the trial jury. Upon the call of the roll of the jury the following members answered to their names and were found present: A. H. McNeer, F. B. McDonald, J. A. Gerow, Carl Schaupp, John Clifford, C. F. Copeland, E. R. Peoples, Sam. Hearn, W. T. Jones, George Bennett, B. T. Prior, and David Hull. Thereupon the trial proceeded. Vuko Perovich was again called and testified upon his own behalf. John Haiduckovich (interpreted by Peter Jelich) was called and testified upon behalf of defendant. Patrick Calvey, Thomas Hagerty, Mike Torotich (recalled), George Driebelbis (recalled) were sworn and testified upon behalf of plaintiff. Thereupon the attorney for defendant moves the court that plaintiff's exhibits "A" and "B" be stricken from the records, which was overruled. Exception; exception allowed. Thereupon counsel for both parties announced the case closed. Counsel for the United States then addressed the jury, followed by counsel for defendant. Thereupon counsel for the prosecution closed the argument to the jury. Whereupon the court read the instructions to the jury, and handed to the jury five forms of verdict and the written instructions. Thereupon the jury retired to the jury room, in charge of two bailiffs duly sworn as provided by law.

(Endorsement:) Entered Journal 3, page 626, August 3, 1905.

33 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES vs. VUKO PEROVICH. } No. 104. Verdict of jury.

And now, to wit, August 3, 1905, comes into open court the U. S. marshal and brings into open court the defendant, Vuko Perovich. Then comes into court the counsel for the plaintiff and defendant. Then also came John Drake, P. S. Peterson, George Dreibelbis, and E. E. Reynoldson, the bailiffs in whose charge the jury has been since this cause was finally submitted to them, and bring into court the jury who tried this case, and the roll thereof being called the following were found present and answered to their names: A. H. McNeer, F. B. McDonald, J. A. Gerow, Carl Schaupp, John Clifford, C. F. Copeland, E. R. Peoples, Sam Heron, W. T. Jones, George Bennett, B. T. Prior, and David Hull. And the jury being asked whether they had agreed upon their verdict, the foreman thereof answered in the affirmative, and, being required so to do by the court, the jury delivered and declared to the court their verdict, which is in words and figures as follows, to wit:

"In the District Court for the Territory of Alaska, Third Division.

"UNITED STATES, PLAINTIFF, "vs. "VUKO PEROVICH, DEFENDANT. } Verdict No. 1. Murder, 1st degree.

"We, the jury in the above-entitled cause of the United States of America against Vuko Perovich, do upon the evidence and the law find the defendant, Vuko Perovich, guilty of murder in the first degree, and that he suffer death.

"G. W. BENNETT, *Foreman.*"

34 Whereupon the jury was polled in open court in the presence of the defendant and his attorney, and each member of the jury, being asked by the court separately whether the verdict so read and delivered to the court is his verdict, stated that the verdict as delivered to the court and read is his verdict. Whereupon said verdict was accepted and filed, and the jury in said cause was discharged.

(Endorsement:) Entered in Journal 3, at page 627, August 3, 1905.

35 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. VUKO PEROVICH, DEFENDANT. } No. 104, criminal. Petition.

Comes now the defendant in the above-entitled cause and respectfully represents to the court that—.

1. He has been, upon trial of this cause, convicted of the crime of murder in the first degree.

2. That numerous errors occurred at the trial thereof, which he believes prevented him from having a fair and impartial trial and entitle him to a new trial.

3. That he has filed his motion for a new trial herein in accordance with the requirements of law and the rules of practice of this court.

4. That to enable him to properly prepare his motion for a new trial to the court a transcript of the evidence and exceptions taken at the trial is necessary.

5. That he is wholly without means to pay for the transcribing of such testimony or with which to pay his attorneys for their services in this case and that they are acting in his behalf without any remuneration.

Wherefore he prays this honorable court that an order be entered directing the official stenographer of the court to furnish such transcript without cost to him.

LEROY TOZIER,
JOHN F. DILLON,
Attorneys for defendant.

(Endorsement:) United States vs. Vuko Perovich. Petition. Filed in the District Court, Territory of Alaska, Third Division, August 9, 1905. E. J. Stier, clerk.

36 In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA *vs.* VUKO PEROVICH. } No. 104. Order.

The defendant in the above-entitled cause, having this day filed his petition herein praying the court to order the official stenographer to furnish him a transcript of the evidence given at the trial of the above-entitled cause without cost to him, and the court having read the same and being fully advised in the premises,

It is therefore ordered: That the official stenographer of this court furnish the defendant a transcript of the testimony given at the trial of this cause without cost to the said defendant.

Done in open court this 9th day of August, A. D. 1905.

JAMES WICKERSHAM,
District Judge.

(Endorsement:) Entered Journal 3, page 5, August 9, 1905.

37 In the District Court, Territory of Alaska, Third Division.

UNITED STATES *vs.* VUKO PEROVICH. } No. 104. Order fixing time for pronouncing judgment.

And now, to wit, August 17, 1905, a verdict of guilty having been rendered in this cause, and neither the defendant nor his attorney

appearing in court to object to the fixing of time for pronouncing judgment and sentence in this case,

The court thereupon appointed Friday, August 18th, 1905, at 10 o'clock a. m., as the time for pronouncing judgment and sentence in this case.

(Endorsement:) Entered in Journal 4, page 26, August 18th, 1905.

38 In the District Court, Territory of Alaska, Third Division.

UNITED STATES vs. VUKO PEROVICH. } No. 104, criminal. Order overruling motion for new trial and arrest of judgment and fixing time for judgment and sentence.

And now, to wit, September 13, 1905, this cause came on for hearing on motions for a new trial and for arrest of judgment. Counsel for defendant moved for a new trial, urging as one of his reasons that the transcript of the evidence shows that defendant did not fully understand the English language in which he was compelled to testify, being denied an interpreter. Counsel for the United States submitted authorities in opposition to defendant's motion. The court, being fully advised and having heard all of the arguments offered,

It is now hereby ordered that defendant's motion for a new trial and defendant's motion for arrest of judgment be and they are each of them overruled and denied, and that on Friday, September 15th, 1905, at 1.30 o'clock p. m., defendant be brought into open court, at which time and place judgment and sentence will be pronounced against him.

(Endorsement:) Entered Journal 4, page 148, Sept. 13, 1905.

39 In the District Court, Territory of Alaska, Third Division.

UNITED STATES vs. VUKO PEROVICH. } No. 104, criminal. Judgment and sentence.

This cause coming on to be heard before this court on this fifteenth day of September, 1905, the plaintiff appearing by N. V. Harlan, district attorney, and the defendant being present in open court in person and appearing by Leroy Tozier, esq., his attorney, and the court having heretofore fixed this as the time to pass sentence and pronounce judgment in this action, and it appearing to the court that heretofore, upon a full trial before the court and a jury the defendant, Vuko Perovich, was on the third day of August, 1905, found guilty of murder in the first degree and that he suffer death for having on the 28th day of October, A. D. 1904, in the Third Division of the District of Alaska, being then of sound memory and discretion unlawfully, wilfully, feloniously, purposely, and of his deliberate and premeditated malice killed one Jakov Jaconi by means unknown, whereby he died on the 29th day of October, 1904. And

now the defendant being brought to the bar of the court and it being inquired of him whether he had anything to say whether sentence should not be passed upon him, says nothing, except as he before has said: Wherefore, by reason of the law and the premises:

It is now ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the defendant, Vuko Perovich, is now guilty of murder in the first degree and that he suffer death, in conformity with the verdict of said jury, and that he, now being present before the court, is here now sentenced to suffer death. That he be remanded to the custody of the United States marshal, to be kept in close confinement until the eighth day of December, A. D. 1905, and on that date, between the hours of six o'clock a. m. and six o'clock p. m., in the U. S. jail yard in the town of Fairbanks, Alaska, he be hanged by the neck until he be dead by the U. S. marshal or his regularly appointed deputy.

JAMES WICKERSHAM,
District Judge.

(Endorsement:) Entered Journal 4, page 170, Sept. 15, 1905. Filed in the District Court, Territory of Alaska, Third Division, Sept. 15, 1905. E. J. Stier, clerk.

40 UNITED STATES OF AMERICA,
Territory of Alaska, Third Judicial Division.

The President of the United States of America to the marshal of the United States of America for the Territory of Alaska, Third Judicial Division, and to his deputies or any or either of them, greeting:

Whereas at a district court in and for the Territory of Alaska, begun and holden at the town of Fairbanks, within and for the Territory aforesaid, on the 3rd day of August, in the year of our Lord one thousand nine hundred and five, Vuko Perovich was duly tried and convicted of the crime of murder in the first degree and the following judgment of the court was thereupon, to wit, on the 15th day of September, 1905, made and entered, to wit:

"In the District Court for the Territory of Alaska, Third Division.

"UNITED STATES OF AMERICA *vs.* VUKO PEROVICH.	}	No. 104, criminal. Judgment and sentence.

"This cause coming on to be heard before this court on the fifteenth day of September, 1905, the plaintiff appearing by N. V. Harlan, district attorney, and the defendant being present in open court in person and appearing by Leroy Tozier, esq., his attorney, and the court having heretofore fixed this as the time to pass sentence and pronounce judgment in this action, and it appearing to the court that heretofore, upon a full trial before the court and a jury the defend-

ant, Vuko Perovich, was, on the third day of August, 1905, found guilty of murder in the first degree and that he suffer death for having, on the 29th day of October, 1904, in the third division of the district of Alaska, being then of sound memory and discretion, unlawfully, wilfully, feloniously, purposely and of his deliberate and premeditated malice, kill one Jacov Jaconi by means unknown, whereby he died on the 29th day of October, 1904. And now the defendant being brought to the bar of the court and it being inquired of him whether he had anything to say why sentence should not be passed upon him, says nothing except as he before has said.

"Wherefor by reason of the law and the premises,

"It is now ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree that the defendant, Vuko Perovich, is now guilty of murder in the first degree and that he suffer death in conformity with the verdict of said jury, and that he, now being present, before the court, is here now sentenced to suffer death. That he be remanded to the custody of the United States marshal, to be kept in close confinement until the eighth day of December, A. D. 1905, and on that date, between the hours of six o'clock a. m. and six o'clock p. m. in the U. S. jail yard in the town of Fairbanks, Alaska, he be hanged by the neck until he be dead by the U. S. marshal or his regularly appointed deputy."

41 Now, therefore, you are hereby commanded, in the name of the President of the United States of America, that on the eighth day of December, 1905, between the hours of six o'clock in the forenoon and six o'clock in the afternoon you inflict said punishment of death upon the said defendant, Vuko Perovich, by hanging him, the said Vuko Perovich, by the neck until he is dead, in the manner and form provided by law.

And that you cause to be made in manner provided by law a return and certificate of the faithful performance of your duties herein and the carrying out of said sentence.

Witness the honorable James Wickersham, judge of the District Court for the Third Judicial Division of the Territory of Alaska, at the town of Fairbanks, in said division and Territory, this 16th day of September, 1905.

[SEAL.]

JAMES WICKERSHAM,
District Judge.

Attest:

EDWARD J. STIER,
Clerk District Court, Territory of Alaska, Third Division.

(Endorsement:) Filed in the District Court, Territory of Alaska, 3rd Division, Sep. 15, 1905. E. J. Stier, clerk, by E. A. Henderson, deputy.

42 In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA *vs.* VUKO PEROVICH, DEFENDANT. } No. 104, criminal. Order extending time for filing bill of exceptions.

And now, to wit, September 16, 1905, it being made to appear to the satisfaction of the court by the attorneys for the defendant that it is impossible to prepare and file a bill of exceptions in this case within twenty days after the rendition of the judgment herein, upon application of the attorneys for the defendant, the United States district attorney, being present and making no objection thereto, it is now

Ordered, that the time for preparing, filing, and serving upon the U. S. district attorney of a copy of a bill of exceptions in this case be extended to December 5, 1905.

By the court:

JAMES WICKERSHAM,
District Judge.

(Endorsements:) Filed in the District Court, Territory of Alaska, 3rd Division, Sep. 16, 1905. E. J. Stier, clerk, by E. A. Henderson, deputy.

43 In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT. } Bill of exceptions.

Be it remembered that at the special July, 1905, term of said court, begun and held at Fairbanks, Alaska, on July 31st, 1905, this cause came on to be tried before the court and jury on the indictment herein charging murder in the first degree, and on the plea of not guilty thereto, and the following proceedings, among others, were had and done: Evidence was introduced by the Government and then by the defendant, and after testimony in rebuttal both sides rested.

The evidence was as follows:

44

In the district court, etc.

UNITED STATES
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45 In the District Court for the Territory of Alaska, Third Division.

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UNITED STATES OF AMERICA, PLAINTIFF,
vs.
VUKO PEROVICH, DEFENDANT. } No. 104, criminal. Testimony.

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47 In the District Court for the Territory of Alaska, Third Division.

Special July term, 1905, Fairbanks, Alaska.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT. } No. 104, criminal. Testimony.

This cause came on for trial at a special term of this court held in and for the Territory of Alaska, Third Division, in the town of Fairbanks, Alaska, on the 31st day of July, A. D. 1905, and on the following days as shown by the record, before the Honorable James Wickersham, judge of said court, and a jury, and the defendant, Vuko Perovich, being present in person, the following proceedings were had:

Court convened pursuant to recess at 9.30 a. m. August 1, A. D. 1905.

Appearances: N. V. Harlan, United States district attorney, and H. L. Cohn, assistant United States district attorney, for the United States; Leroy Tozier for defendant.

A jury having been duly impaneled and sworn in the case, and the case opened to the jury on behalf of the United States by H. L. Cohn, and the defendant waiving his right to make a statement, and all witnesses having heretofore been excluded from the court room, it was requested by Mr. Harlan that the order excluding said witnesses be modified so as to allow George Dreibelbis, deputy United

48 States marshal, to be present to attend to his duties as such officer, which request was granted, the following proceedings were had and testimony taken from day to day as shown by the record.

49 MARK SKORLICH, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?
A. Mark Skorlich.
Q. Where do you reside?
A. Fairbanks.
Q. How long have you resided in Fairbanks?
A. Since the 9th day of last August.
Q. Where did you live prior to that?
A. In Dawson.
Q. How long did you live in Dawson?
A. For one winter—came over here. I was here a while, went to Dawson, came here and went back again.
Q. What is your nationality?
A. Austrian.
Q. What language do you speak?
A. Croatian.

Q. How long have you been in America?
A. Since '97—the 10th of June.
Q. Did you know Jacob Jaconi in his lifetime?
A. Yes, sir.
Q. How long did you know him?
A. Since 1901, 18th of June, when I first came to Dawson.
Q. What year did you say you first got acquainted with him?
A. 1901—the 18th day of June.
Q. How long did you know him there?
A. I knew him there until the 12th of March, 1902, until we started together for this country.
Q. You and he came to this country together?
50 A. Yes, sir.
Q. To Chena or Fairbanks?
A. To Fairbanks.
Q. Were you engaged in work with him at any time?
A. I was partner.
Q. How long?
A. From March 3rd to July 1st, when I got back to Dawson again.
Q. From March 3rd to what time?
A. About July 1st.
Q. What business were you engaged in?
A. Fishing.
Q. Where?
A. About a mile and a half or two miles below Chena.
Q. You were there through the spring?
A. Until the 12th of June, when we left for Dawson.
Q. Then you returned to this country?
A. Then, when we got back to Dawson we intended to go right back, but we did not, and we staid there until fall—we didn't go down.
Q. When did you come back?
A. During the winter. Jaconi was ready to go down in March, and I was working on a claim on Dominion Creek, but I could not get my pay.
Q. When did he come back?
A. He came back in March.
Q. When did you come?
A. I came back the 9th day of August.
Q. Did you meet Jaconi after you came back?
A. First day I came I went to him.
Q. Where did you find him?
A. About three miles below here at a fish camp.
51 Q. That was last August?
A. Yes, sir.
Q. State whether or not you stopped with him for a time.
A. I stopped with him a few days—left there and went hunting.
Q. What was Jaconi doing?
A. He was fishing.
Q. In what river?
A. In the Chena Slough here.

Q. Did you see him after that?

A. When I came back from hunting trip—I lost my finger with shotgun—he wanted me to come back and stay with him again.

Q. You lost your front finger?

A. Yes, sir; shot it off.

Q. Did you go and stay with him?

A. Yes, sir.

Q. When did you go and stay with him?

A. On the 7th or 8th day of October; not of October—on the 8th day of September I went there.

Q. What did you do there?

A. I just watched his camp when he fished with Mike Torlich. I slept in his cabin.

Q. How long did you stay there?

A. Until it froze and he got through fishing, and he came back home.

Q. When was that?

A. The 21st day of October.

Q. What did you do then?

A. I went back to town. It was cold for me to come to the doctor.

Q. Why did you come to the doctor?

A. On account of my finger; I had to have it dressed every morning.

52 Q. That was about the 20th?

A. The 20th or 21st of October.

Q. When were you back to his camp again?

A. In a day or two I took a trip down again to see him.

Q. Find him there?

A. Yes, sir.

Q. Anybody with him?

A. No, sir.

Q. How long did you stay?

A. I staid during the day and went back before night.

Q. Back where?

A. To Fairbanks.

Q. Did you go to his cabin again?

A. I went once more—about three days before he was killed.

Q. How long did you stay?

A. From ten or eleven in the morning—stopped till three or four in the afternoon.

Q. Anybody there that morning?

A. No, sir.

Q. Can you describe the cabin he lived in to the jury? Do so, if you can.

A. Well, suppose the cabin was four logs high and the floor in it—half-inch flooring—a frame over the logs and a tent on it, and then there was another frame—another frame and tent over that tent—over the top.

Q. What did you say last?

A. There was two tents—one about 8 x 10—another frame put up on top of this 10 x 12. I don't know exactly—there were two tents

and about six inches between them. The floor was just from the door to the bunk, but under the bunk there was no floor.

53 Q. On what was the floor laid?

A. On small poles—the poles were put lengthwise and the floor was put crossways.

Q. Lengthways of the tent?

A. Between the bed and door.

Q. Where was the bunk, in reference to the door?

A. Straight back of the door crossways of the tent—in the back end of the tent.

Q. The bunk ran the same way that the floor did?

A. Yes, sir.

Q. On which side of the tent was the door?

A. The door was in the front, facing the river.

Q. Any other openings—a window or other door?

A. No, sir.

Q. What was in the tent, as you saw it last?

A. His clothes, bedding, some old nets, some grub, some of Mike Torlich's clothes, cooking utensils——

Q. Where did he keep his groceries?

A. They used to be in a box under the table on the right-hand side of the door; there was a big box with a cover on it.

Q. Where was the table situated?

A. It was on the right-hand side of the room, between the bunk and the door.

Q. Where was the stove?

A. The stove was on the left, about eight inches from the logs.

Q. To the left of the door?

A. To the left, going in.

Q. What kind of a stove?

A. A Yukon stove, double, with asbestos between the two sheets.

Q. The bottom, sides, or where?

A. All round.

54 Q. Was it upon anything or was it on the floor?

A. It was on top of four sticks, a rack frame, and tin cans on the top of the rack, so it was about eighteen inches from the floor.

Q. Now, with regard to the supplies, groceries?

A. When I left he had half a sack of flour, some cheese, half case of tomatoes, a few pounds of rice, half box spegetti, some sardines, some butter, and Holland cheese.

Q. Do you know what he used in cooking—used in the way of grease? Did he use lard or butter?

A. He had lard and butter. He had lard—three-pound can; he one gallon can half full and *and* one gallon can of olive oil.

Q. How much oil did he have there altogether?

A. When I was living there he had a gallon can and another gallon can one-third or one-half full. We used that instead of lard.

Q. That is what you used when you were there?

A. Yes, sir.

Q. You say he was a fisherman; where did he keep his nets?

A. He kept some of his nets that had been used that season right

under his bed and the rest of the nets he had right there. Some of his nets were together when Mike Torlich left there.

Q. Did he have any other tent?

A. He had another tent, I should say, eight feet from this.

Q. How far was that from this tent?

A. Eight or ten feet—filled with dried salmon.

Q. What was the tent used for?

A. For storing fish in.

Q. Any other house about it—about the main tent there?

A. It was the tent, say, to the right from where he lived;

55 then there was a dog house four or five feet toward the left.

Q. This tent, on which direction was it?

A. On the right.

Q. From the door?

A. Yes, sir.

Q. About eight or ten feet?

A. Seven or eight feet.

Q. That is where the fish was kept?

A. Yes, sir.

Q. His dog house was to the left?

A. Yes, sir.

Q. The dog house, how large was that?

A. Five by seven.

Q. What was it made of?

A. It was made of logs exactly like a log cabin.

Q. Covered with what?

A. Just dirt and poles.

Q. How close was it to the main tent?

A. Four or five feet—not over four feet.

Q. Did you have any wood cut, any stove wood, when you were there last?

A. He had about, when I left there—it was about three-quarters of a cord of wood and about half of that was sawed up, and when I came there again he had it pretty near all sawed up.

Q. Where was the wood?

A. The wood was piled between—just between the corner of the dog house and the tent, toward the river, five or six feet from each corner of the dog house and tent.

Q. How close to the main tent?

A. Six or seven feet.

56 Q. Six or seven feet from the tent in which he lived?

A. Yes, sir.

Q. How far from the dog house?

A. Just like the tent was here and this dog house here [indicating], and the tent here—straight in front of it.

Q. You say this was about three days before he was killed?

A. Yes; when I saw it.

Q. When you saw it last?

A. Yes, sir.

Q. Where did you go then?

A. Up to Fairbanks.

Q. You were stopping here then, were you?
A. Yes, sir.
Q. When did you next go back to this tent?
A. I went back on the 29th, in the morning about eight or nine o'clock. I took a .22 rifle and went down to hunt and at the same time to see Jaconi. I went up the hill and came back across country to the camp.
Q. You mean Jacob Jaconi's?
A. Yes, sir.
Q. What time did you get there?
A. I got to the river bank exactly when the whistle blew at twelve. There were three men and dog sled going down the river and it took four or five minutes before I got to the tent. I saw the tent was burned. The dogs was lying around the tent and howling.
Q. How many dogs?
A. Three dogs that I saw when I came there.
Q. Whose dogs?
A. Jaconi's.
Q. What was the condition of the cabin or the tent?
57 A. The tent and the poles were burned down. There was nothing but two logs left—two and a half. They were just falling in and burned around on the side and back. There was nothing burned towards the front, but back where the bunk was. When I first saw it—right near that end of the tent—I thought it was an old skin burned like, and when I went inside first I did not see that it was a human body or what it was. I go back to the woods about fifty or a hundred yards and I called Jaconi. I thought he was out hunting. I got no answer. I heard lots of shooting, and I go back again and I see Leo, the biggest dog. Then I took a stick and went close to it and then I saw a man's legs like that [indicating].
Q. Where did you see that?
A. On the end of the bed.
Q. Where the bunk was?
A. Yes, sir.
Q. Tell the jury what you saw there the best you can.
A. I came close—had a little stick in my hand. I went to touch it where this pile was. I went to touch it with and I saw the leg bones sticking out, and I looked around and I saw the trunk. The face and head was sunk like this [indicating] right against the chest.
Q. How was that?
A. The head was close to the chest.
Q. It was leaning forward?
A. Yes, sir.
Q. What was there left of the head that you could see?
A. Nothing but the back, like it was kind of covered up. I didn't have exactly time to look; I was excited——
Q. What did you do next?
58 A. I started to go to Fairbanks for the coroner and I saw somebody crossing the slough on the trail where people go, and I ran up to them—two men with dogs—and I asked one of them—I asked them to come and see what I had found; and one of

them came and took a look, and he said "I can see his flesh." We was right on the left side. So far as I could see I could not tell. I did not think it was his flesh; I thought it was the color of the ashes, and I told him not to disturb it, and whether he said somebody ought to stand watch or better not disturb it I don't know. I told them to give me their names and I would go up to Fairbanks and report.

Q. Did they give you their names?

A. Yes; I had a letter and they wrote on the back of it, and I gave them my name.

Q. Do you remember their names?

A. I gave them to the marshal when I came in.

Q. Do you remember them?

A. No; I could not call either one.

Q. They took your name?

A. Yes; I told them to go to Hadley's saloon, the White Horse, Mr. Hadley knows my partner and Mike Torlich, he was my partner, and tell him.

Q. Whose partner?

A. Jaconi's partner.

Q. At that time?

A. Yes, sir.

Q. Go ahead.

A. When I came up here I reported to the first man I found—the chief of police, and he said——

Q. You need not tell what he said.

59 A. We went to the marshal's office.

Q. The United States marshal?

A. Yes, sir; and I reported to him.

Q. Do you know the defendant, Perovich?

A. I know him by sight and by name, but I never was acquainted until he came to Jaconi's camp.

Q. When did you see him?

A. I think it was five or six days before I left; on the 15th or 16th of October.

Q. What time did he come there?

A. I was sleeping—it was about daylight when I woke; the trail comes near there; they can see any one coming along the telegraph line, and I heard the dogs bark and come toward the tent; I knew that somebody was coming, and they barked and barked until I heard somebody push the door in. He pushed and, well, the door was tied inside with a rope; and he said something and I said, "What do you want?" He was excited and he said, "You talk my language." I said, "What do you want?" He said, "I don't want anything; I don't know; I don't want anything," and I opened the door. I said, "You don't want anything?" and he said, "No." I went back to bed, and I told him to come in and I would start a fire, and then I told him to go and start a fire. Well, I threw him a match and he started the fire. I started to dress myself. It took me quite a while, because I had only one hand, and I went outside and got some stove wood, and I got some fish we had and put it on to cook,

and I asked him if he had had breakfast and he said, "I don't want you to get me anything to eat." He had something with him and I told him "You need not eat that," and he threw it out and he ate breakfast. He ate breakfast with me, and when we got through breakfast I asked him where he was going—where he was traveling. He said he was just traveling and was going to a fish camp and they might give him a job. I told him I did not have anything——

Mr. Tozier. If the court please, I object to this as immaterial.

Mr. Harlan. I think it is important. He was there seemingly without any reasonable excuse.

Court. The objection is to the witness repeating the conversations.

Mr. Harlan. I supposed that in connection with the circumstance that he was talking with the defendant at the place where the tragedy afterwards occurred that it would be permissible.

Court. Go ahead.

Q. How long did you talk with him?

A. He was there an hour and a half or two hours.

Q. You may state whether or not he told you where he came from.

A. He told me——

Mr. Tozier. I object to this evidence in its entirety. It has absolutely no connection with the matter at issue.

Court. The court can not tell whether it has or not. It is a conversation at the point where the tragedy occurred, and it is with the defendant himself, and the prosecution thinks he can connect it in any way with the circumstances in the case the court will hear it.

Mr. Harlan. In my opinion it is competent testimony in connection with the facts and circumstances in the case.

Court. The objection is overruled and an exception allowed.

61 Q. State, if you know, what direction he went from that place that morning.

A. He went from my tent toward the telegraph line; going down to Chena, he said.

Q. Where is this telegraph line, in reference to the tent?

A. About a hundred yards back from the tent.

Q. Further back from the river?

A. Yes, sir.

Q. Tell what he did.

A. He went back to the telegraph line; when he got to the telegraph line—I was standing outside to see where he was going—he went down the telegraph line and looked back——

Mr. Tozier. I object to this as immaterial.

Court. Objection overruled and exception allowed.

Q. Go on.

A. He took a cross-cut a little further on and went back to Fairbanks.

Q. Where did you next see him?

A. I bandaged my hand, and I started up town to the doctor. I had to be there at nine o'clock, and I got there before, and I went to see my friend who was running a restaurant, and I saw Perovich lying across a crap table, and he says hello to me.

Q. What time of day was that?
A. Quarter to nine.
Q. What time was it when he reached the tent that morning?
A. It must have been half past five or six; it was good daylight.
Q. Did you have any further talk with him?
A. I did not. I just went over and went to the restaurant.
Q. Did you ever see him after that before the tent was burned?
A. Yes, sir.
62 Q. Where did you see him?
A. In the Fairbanks saloon.
Q. How long was that after that?
A. Three or four days—about three days, I think.
Q. About when was it that he came to the tent which you described?
A. About the 15th of October, I think.
Q. Then, you saw him three or four days after that?
A. Yes, sir.
Q. Did you see him after that?
A. After the 15th?
Q. Yes. Did you see him any place after that?
A. I saw him in Fairbanks three or four days after I left the tent.
Q. Three or four days after you left the tent?
A. Yes, sir.
Q. That was the 20th or 21st of October?
A. I left there the 21st of October.
Q. You saw him three or four days after that?
A. In the Fairbanks saloon.
Q. Here in Fairbanks?
A. Yes, sir.
Q. Did you ever see him after that?
A. Yes, sir.
That is all.

63 Cross-examination by Mr. TOZIER:

Q. How long had you known Jaconi?
A. Eighteenth day of June, 1901.
Q. What time did you leave his camp, did you say?
A. I think it was the 21st, because he paid me off for one month and two days.
Q. Were you working for him?
A. He told me he was willing to pay me to stay and he did not want to leave his camp alone and he wanted me to stay.
Q. You were not in partners with him, then?
A. No.
Q. How long did you say you knew him?
A. Some about twelve days before I left there; I was around town, and I think he was pointed out to me by some of his countrymen.
Q. Is he the same countryman as yourself?
A. I know the language, but I belong to Austria.
Q. Where did you learn the Slavonian language?

A. The Slavonian language; we talk the language—it is mixed with Austrian.
Q. Is it the same language?
A. It is the same language—it is pronounced the same.
Q. Do you speak more than the two languages?
A. I do.
Q. What others?
A. I talk Italian and some Spanish.
Q. The Slavonian language is not the same?
A. Some call it Slavonian and some Austrian. They use the Greek letters and we have the Latin letters.
Q. That is the language that Perovich uses?
A. He talks the same way, but the writing is different.
64 Q. How old a man was Jaconi?
A. So far as I could judge, from what he told me, forty-five or forty-six year.
Q. Was he as large as you are?
A. About my size.
Q. You never paid any particular attention to that?
A. No; he was about my size.
Q. Was he light or dark complexion?
A. Dark.
Q. Any peculiar marks? Did he have any scars on him, anything that you know of?
A. No.
Q. How many nets were under the bed in the cabin, Mark?
A. There were a few bran new nets which he had on the back—on the top of the bunk in a bag, down just far enough so he could not reach them with his feet.
Q. How many?
A. I don't know exactly—five or six nets; and we had some net ropes and leads right below the bed.
Q. Underneath the bed?
A. Yes, sir.
Q. What else was under the bed?
A. Nothing that I remember, except the bag and some Holland cheese and spegetti.
Q. What else was under the bed?
A. Nothing that I remember, except some old clothes and shoes.
Q. How high were the logs?
A. About two feet; the height of the four logs.
Q. These things were on the left side of the tent?
A. It was on the right.
Q. Then his bed, where he slept, was on the left?
65 A. How do you mean?
Q. You say these nets and things were on the right side of the tent and his bunk was on the left side?
A. Yes, sir.
Q. How many thickness of tent did you say there were?
A. Two.
Q. What was at the foot of the bed?

A. A little warping and clothes and these nets.
Q. Was there anything else?
A. Clothes and camp trash and things.
Q. What kind of a pillow did he use?
A. Feather pillow.
Q. What kind of a mattress did he have?
A. Feather mattress.
Q. What kind of bedding?
A. Goat hide and blankets.
Q. Feather mattress, feather pillow, and goat hide and blankets?
A. Yes, sir.
Q. Did he sleep with the blankets over him?
A. I suppose he did.
Q. How far did you say the stove was from the wall?
A. Eight or ten inches.
Q. Did you ever examine the stove?
A. I did; I had been there for a month. I think I ought to know.
Q. How did you make the examination as to its having asbestos between the plates?
A. Well, these stoves are made that way.
Q. You did not see it in this stove?
A. I know that is the kind of stove it was.
Q. You know it was that kind of stove, but you did not see it in this stove?
66 A. I did not open it to see; it is supposed to be that way.
Q. Are any of these other things suppositions?
Mr. HARLAN. I do not think that is fair to the witness.
Q. Are you a stove maker?
A. No, sir; I am not.
Q. Did Jaconi have a gun?
A. Yes, sir; a short gun—a double-barrel Parker.
Q. Do you know where he got it?
A. He got it in the Klinkit wreck—where he was fishing—he picked it up out of the river.
Q. Did he have it there?
A. Yes, sir.
Q. Where did it usually stand?
A. It was on the logs—right on top.
Q. Where was the gun when you first discovered it after the fire?
A. I found the gun lying on the ground right near the door; the point was toward the bed—the muzzle was toward the bed.
Q. Was there a stock on the gun?
A. No; the stock was burned.
Q. Just the barrels left?
A. That is all.
Q. Did you see any tools after the fire?
A. I could not say—I saw a number of things—a claw hammer and the other tools were in there.
Q. You did not see them?
A. There was a box of files and a chain—I could see them.
Q. Still on the logs?

A. No; rolled off. We found them the next day.
Q. Did you find any of the tools?
A. The jury found some.
Q. Did you find anything?
A. No, sir.
Q. Did you look for anything that morning?
A. No, sir.
Q. Did you look for anything the next day?
67 A. Well, I went there.
Q. State what you did.
A. I did not do anything.
Q. What kind of stovepipe did he have?
A. It was new stovepipe; good stovepipe.
Q. What kind of lock was on the door?
A. I could not tell the name.
Q. What style?
A. A common lock.
Q. Padlock?
A. Padlock.
Q. What size?
A. An ordinary small lock.
Q. When he went to bed did he lock it?
A. No; he had a rope inside.
Q. When he left, how did he lock it?
A. He locked it on the outside.
Q. He used the padlock?
A. Yes, sir.
Q. How many dogs did he have?
A. Four.
Q. A dog team?
A. Yes, sir.
Q. Were there some pups?
A. One was a bitch, and she had nine small pups.
Q. When were these pups born to the bitch?
A. The day I went to stay in the camp.
Q. About how old were the pups at the time you discovered that the tent had been burned?
A. A little over a month old—eight or ten days.
Q. Still nursing their mother?
68 A. After the fire, when I got there the next day, I could only find five, and she was frightened, and she must have stowed away the pups.
Q. That bitch was rather fierce, wasn't she?
A. What do you mean by that?
Q. I mean that if anyone went up there she would not let him go to the tent?
A. Not unless she knew him.
Q. All the dogs were fierce?
A. If he was there once, it was all right.
Q. If a person went there once, they knew him?
A. Yes, sir.

Q. They would bark a good deal?
A. If they saw him go too close they would.
Q. The first time a man went there they would raise a great rumpus?
A. Yes, sir.
Q. Is it not a fact that the bitch would not let anybody come to the tent?
A. She would not let a stranger go to the dog house.
Q. She would not let them come to the cabin either?
A. She would not protect the cabin like she would the dog house. That is all.

Redirect examination by Mr. HARLAN:

Q. I will ask you this question: If you know, state where Jaconi kept his clothes, if he had any?
A. He kept his clothes hung on the frame of the tent—a new suit.
Q. On the frame of the tent?
69 A. The upper center pole; the overcoat was hung on the right, and on the left there was a stick where the new suit was hung.
Q. He had no trunk?
A. No, sir; he had a war bag, where he kept his shirts and that kind of stuff.
Q. Where was the war bag kept?
A. Right at his feet.
That is all.

Recross-examination by Mr. TOZIER:

Q. What clothes did he have at the camp?
A. He had an overcoat and a new coat and vest—kind of dark—a light pair of pants—they were hung on the stick near the top—and some other stuff; he had a lot of different clothes that a man usually has.
Q. Go on and describe the rest, if you know them.
A. The pants was a summer pants—very light.
Q. Light in color or light in weight?
A. Light in color and weight. He had two white shirts—a white shirt with little square checks in it—some cotton neckties, a black hat, and shoes.
Q. What kind of shoes?
A. Fine Sunday shoes—eight dollars—I don't know what make. He had some moccasins and rubber shoes and some other stuff in the bag that I did not see, and some mitts.
Q. Did you see the mitts?
A. No mitts; it was horsehide gloves with flannel lining.
Q. What else?
A. A razor and razor strap, some writing paper that I left
70 him, and there were some silk handkerchiefs.
Q. What color were they?
A. I believe one was green and red and some white.
Q. Did he have any outside clothes—heavy clothes?
A. Sweater and blue shirts.

Q. Do you know how many blue shirts he had?
A. I don't know—I know he had a blue shirt.
Q. How many sweaters?
A. He had one blue sweater that I knew of.
Q. Was there anything peculiar about it that would distinguish it from any other?
A. Yes, sir; it was worn some, and there was a patch on the sleeve.
Q. A patch on the sleeve?
A. On the elbow, and a hole in the side that came to the left in front and to the right back here.
Q. It would be up here if you had it on one way, and it would be down here if you wore it the other way?
A. Yes, sir.
Q. That is the only sweater he had?
A. Yes, sir; that is the only one I knew of.
Q. He had had that for some time?
A. He had that for years.
Q. Did he wear it much?
A. He wore it a whole lot—most of the time.
Q. That is the only one he had?
A. The only one I know of.
Q. That was patched on the sleeve and had a hole in the body of it?
A. Yes, sir.
Q. Anything else that he had to wear that you remember?
A. He had some stuff in the bag that I did not see—I could not describe them; I just saw some stuff there.
71 Q. What kind of a hat did he have?
A. Black hat; Stetson.
Q. What kind of a cap?
A. Beaver; fur cap.
Q. What size hat did he wear?
A. I don't know; seven, I think—something like that.
That is all.

VAL DIEBOLD, a witness called on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Chena.
Q. How long have you lived there?
A. Since last September—October.
Q. Do you remember where you were on the 29th of October?
A. Yes, sir.
Q. You may state whether or not you saw Mr. Scorlich that day.
A. I don't know as I know him.
Q. The witness that went out—did you see him?
A. I think I met him right there at the door.
Q. Did you recognize him?
A. Yes, sir.
Q. Where did you see him that day?

A. Between here and Chena, about three miles from here.
Q. To what did he call your attention?
A. Myself and another fellow were going by, and he halloed to us and said he wanted to see us and tell us something.
Q. Where were you going?
72 A. We were going from here to Chena.
Q. On the trail?
A. Yes, sir.
Q. Traveling afoot?
A. Yes, sir.
Q. Who is the other party?
A. He was a stranger to me.
Q. Just happened to walk with him?
A. Yes, sir.
Q. What did he do?
A. He told us that he came to see a man, mentioning the name, and he said he is burned up; he said "He is a friend of mine," and he said "He wished we would come over and look at it." We went and soon discovered that it was the remains of a human body.
Q. What did you see? Tell the jury.
A. The first thing we saw—we took a little stick—we moved near the end of the tent and I saw some bones without any flesh on them. The only thing we saw with any flesh was the chest and a part of his shoulder—this bone.
Q. Where did you see this bone?
A. Like there—where we saw the burned bone in the ashes.
Q. In reference to the tent, what part of the tent?
A. In regard to the tent, they lay what I should call the northeast corner of the tent, or, in other words, it seems the entrance from the tent was facing the slough, and it would be on the left-hand side in the far corner.
Q. How far from the wall—there was part of the wall left?
A. Some of them were still burning—perhaps a foot or eighteen inches from the back wall lengthwise.
Q. How long were you there?
A. Only about twenty minutes, I suppose.
73 Q. Then you went on down to Chena?
A. Yes, sir; we went on down.
Q. What was the condition as to fire being there?
A. Well, the only thing we saw burning or smoking was some of the logs. It seems the bottom of the tent had been walled up about two feet, and some were still burning a little, and smoke was still coming out from this man's body or chest. We were going to investigate, and I told the boys that perhaps we had better let it lay as it was and report it.
Q. You made no further examination?
A. No, sir.
Q. What day was that?
A. The latter part of October—I believe the 29th of October at noon.
That is all.

Cross-examination by Mr. TOZIER:

Q. Had you ever been at the cabin before that?

A. Not before that.

Q. Where were you when Scorlich called you?

A. We were just about a hundred yards from there on the trail running from here to Chena.

Q. Who was with you?

A. Some Sweedish fellow.

Q. Had you seen him before that day?

A. No, sir.

Q. Where did you meet him?

A. A little below here.

Q. Was he going to Chena?

A. Yes, sir.

74 Q. On the trail?

A. Yes, sir.

Q. Have you seen that fellow recently?

A. Not recently.

Q. Where did you see him?

A. I don't remember whether it was in Fairbanks or Chena.

Q. What size was he?

A. A man about my height and a little heavier.

Q. Dark and heavy?

A. Light complexion.

Q. About what age man was he?

A. He was a man about thirty-five—maybe three or four years older or younger.

Q. What is the distance from here to the place where Scorlich called you?

A. I judge about three miles.

Q. How long had you been traveling with the Swede before Scorlich called you?

A. About half an hour.

Q. About a mile and a half this side of where Scorlich called you you met this Swede?

A. Nearly two miles.

Q. Didn't you learn his name?

A. Yes, sir; he told me his name, and I got his name on a piece of paper, but I lost the paper.

Q. When you got to the cabin did you see any dogs?

A. Yes; there were three dogs and some pups.

Q. Do you remember seeing anything of a gun?

A. Yes, sir; it was a double-barrel shotgun—as we went into the cabin, on the right as go in, in the corner.

Q. Was it standing up in the corner?

75 A. Simply the barrels—the stock was gone. Yes, sir.

Q. What else did you see there?

A. We seen some cans there.

Q. What kind of cans?

A. Well, the only thing that I remember particularly, this man called attention to these cans. He called my attention to some oil

He said there is some of the oil he bought day before yesterday—there were two or three gallons.

Q. You did not examine the cans?

A. No, sir.

Q. What else did you see there?

A. Just the ruins—some other things around there.

Q. Do you remember what they were?

A. No; I can not.

Q. Do you remember seeing a stove there?

A. Well, I could not swear to that now.

Q. Was the house—where was the house banked up?

A. On the side.

Q. About how high?

A. About eighteen inches.

Q. That would cover about how many logs?

A. I should judge about four.

Q. Where it was banked up; where the logs—part of them—were under the dirt, that was that you had reference to when you said they were smoking or smouldering?

A. Yes, sir.

Q. All the upper structure of the cabin or tent was destroyed?

A. Yes, sir.

Q. Where you found the remains of the human body, was there much ashes there?

A. There was quite a little.

76 Q. Was there anything there that indicated to you that any bedding had been there?

A. There was no bedding. There was a crust over his chest. We could not tell whether it was bedding or whether it was part of his clothes, or whether it was burned flesh.

Q. Where you saw the flesh—some of it was on the chest and some on the thigh?

A. No; the thigh bones were white.

Q. Did you see anything of the feet?

A. No, sir; we did not examine it.

Q. Did you see anything of the head?

A. We looked for that; I could not find it.

Q. Did you see his hands?

A. Only some of the bones.

Q. That is, some of the bones of the arm?

A. I presume it was from the upper arm.

Q. Where did you see these remains at the time you saw them?

A. By entering the tent it would be at the back on the left-hand corner.

Q. Which way had the head been pointing, evidently?

A. It would be pointing in a westerly direction—no, east, with the feet to the west.

Q. That is, you enter the cabin from the south and walk toward the north?

A. Yes, sir.

Q. Then the body would be lying in what direction?

A. Lying east and west.
Q. Which way was the head?
A. It would be west.
Q. This way, with the feet in that direction [indicating]?
A. Yes, sir.
77 Q. What distance was the feet or thigh bone from the easterly wall of the cabin; how many feet?
A. I should judge from that bone to the easterly wall of the cabin it would be about, probably, four feet.
Q. From that point to the westerly wall of the cabin would be what distance?
A. About the same distance.
Q. Could you tell by the remains whether the body had been in a sitting position at the time it was burned?
A. Well, I was quite positive that it was lying flat down on its back.
Q. Did you see any other cans there besides the olive oil cans that Scorlich pointed out to you?
A. Yes, sir; but I don't remember what kind they were; there were syrup cans; I remember that.
Q. Did you see any cans outside the cabin?
A. No, sir; I don't remember any.
Q. Did you see any other outhouses or buildings?
A. I did.
Q. What were they?
A. One was a dog house, which was inhabited by the dogs at the time, and the other was a cache, in which he had a lot of fish stored.
Q. Describe that cache, will you please?
A. Well, it was in a northerly direction from the tent, and it was enclosed by some bark—spruce bark.
Q. Did it have a roof—any cover?
A. I am not sure of that.
Q. Where was the dog house?
A. It was left of the tent, as you enter the tent in a westerly direction.
Q. About how far distant?
78 A. About twenty-five feet.
Q. How far was the tent—cabin—where you found the remains from the bank of the Chena River?
A. About thirty feet, maybe thirty-five.
Q. How far from the little slough that runs back—the one you cross before getting to the tent?
A. Well, that I don't know just exactly. It may be one hundred feet.
That is all.

Redirect examination by Mr. HARLAN:

Q. Had you ever seen this place before?
A. The tent; no, sir.
Q. What was the condition of the cache you spoke of?
A. It was in good shape; I did not make a close examination.

Q. It was still standing?
A. Yes, sir.
Q. It was not burned?
A. No, sir.
Q. The dog house was not burned?
A. No, sir.
Q. Did you see anything else to speak of?
A. No, sir; I believe not.
Q. Outside or inside?
A. No, sir.
Q. Did you state what the distance was from the tent the man lived in was from the cache?
A. I don't believe I stated the distance between the cache and the tent.
Q. You may state if you know.
79 A. I did not pay so much attention to the distance—about fifty feet, perhaps.
Q. What was the distance from the dog house to the main tent, as near as you can tell?
A. I don't know, but I should judge about twenty-five feet; maybe a little better.
Q. You did not know the man who lived there?
A. No, sir; I don't know any of the parties.
Q. You don't know any of the parties?
A. No, sir.
Q. Never knew any of the parties at any time?
A. No, sir; never did.
That is all.

JOHN PAKEGE, a witness called on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?
A. John Pakege.
Q. Where do you live?
A. Fairbanks.
Q. How long have you lived here?
A. Since the latter part of August a year ago.
Q. Did you know Jaconi?
A. Yes, sir; I met him a couple of times.
Q. Do you know Perovich, the defendant in this case?
A. Yes, sir.
Q. How long have you known him?
A. I knew him about three weeks before this happened.
80 Q. Before the tent was burned?
A. Yes, sir.
Q. Where did you meet him first?
A. The first time I met him was in the Lacey saloon.
Q. How many times did you see him after that?
A. Quite a few times.

Q. Do you both speak the same language?

A. Yes, sir.

Q. You may state whether or not you had any conversation about his financial condition—state whether or not he had any money.

A. Yes, sir; I did. He said that he was broke, and I gave him two dollars.

Q. When was that?

A. Two or three weeks before that.

Q. The first time you saw him?

A. The first time I saw him.

Q. Did you have any further talk with him about that?

A. I did.

Q. When?

A. When he was working in the Fairbanks restaurant.

Q. What was said then?

A. I asked him to give me back my money, and he said he won't give it to me, and I said I didn't want him to keep it, and he said he was going to fix me.

Q. That was the answer he gave you?

A. Yes, sir.

Q. Did you ever talk to him any more about the money?

A. No, I didn't; I spoke to him about the money no more, because I didn't want to have anything to do with him.

Q. Did you go down to this tent after it was burned?

81 A. I was there with Marshal Driebelbis and Mr. Haidukovich.

Q. What did you do there?

A. I went there to protect what was left there.

Q. How long did you stay there?

A. Two nights and two days and a half.

Q. You remained there until the remains were taken away and buried?

A. Yes, sir; a day afterward and a night.

Q. The coroner's inquest was held while you were there?

A. Yes, sir. Yes, sir; the commissioner came, and Mr. Marshal [Dreibelbis] came there, and a couple of witness came—five or six of them came there.

Q. What did you find when you went there—when you was sent there by the marshal?

A. I went there to see that nothing was taken away.

Q. Did you see it then?

A. After that they left me there to dig around.

Q. You did not understand the question. Well, go ahead and tell what you did.

A. They were there pretty near two hours, and then they got all the rest of the stuff, and he told me to bring all the stuff I can find up in court, and I did it.

Q. What did you find?

A. I found lead melted. That is all I found.

Q. What did you see there in the way of bones, if anything?

A. There was some about fifteen feet from the cabin. It was a

piece of the wrist, and there was a from bone here. [Indicating the breast.]

Q. Where were these bones?

A. About fifteen feet from the side of the tent where they had been burned.

82 Q. Outside the tent?

A. Yes, sir.

Q. Do you know how they got there?

A. I do not. I came there late in the evening.

Q. What time did you get there?

A. It was between seven and half past seven.

Q. What day?

A. The 28th or 29th of October.

That is all.

Cross-examination by Mr. TOZIER:

Q. What part of the old country did you come from?

A. Austria.

Q. You did not come from Montenegro did you?

A. No.

Q. Do you belong to the same secret society that Perovich does?

Mr. HARLAN. I object to this for the reason that it is not proper cross-examination.

COURT. Yes.

A. You were born in Austria, did you say?

A. Yes, sir.

Q. Perovich came from what place?

A. Montenegro.

Q. Does he speak the same language—the same accent and dialect?

A. No, sir.

Q. How far away is that from where you came from?

A. About four hundred miles.

Q. Under the same government?

A. No, sir.

That is all.

83 JOHN MIOCEVICH, a witness produced on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?

A. John Miocevich.

Q. Where do you live?

A. I am in Fairbanks now.

Q. How long have you lived in Fairbanks?

A. Last fall, in October.

Q. Living here in October, were you?

A. Yes, sir.

Q. Were you sent by the deputy marshal down to where Jaconi had lived?

A. Yes, sir.

Q. When did you go, do you remember?

A. A Saturday in the afternoon, about between four and five o'clock; I could not tell exactly.

Q. Saturday afternoon. What day of the month?

A. I think it was the 29th of October. I am not sure. I am not certain of the day—the month I am sure.

Q. What did you go there for?

A. The marshal sent us down; the marshal sent two of us to watch the body that night, and they came down to investigate the next day.

Q. Did you know Jaconi?

A. No, sir.

Q. Do you know Perovich?

A. No; I don't know anybody.

Q. How long were you there?

A. Two days.

84 Q. Did you make any examination of the condition of the remains of the body?

A. Yes; I tell you how it was. When we came down it was very dark and we went and lit a fire close to the tent, and we hear the dogs in the brush. We staid alongside the fire to keep ourselves warm all night. After we came we hear something making a motion into the brush. We staid there until it get light and then we find four bones that the dogs took out.

Q. You kept everything in the same condition after you got there?

A. Yes, sir; exactly, after we got there.

Q. What bones did you find?

A. The arm bones we find. The doctor examined that.

Q. What did you find, so far as you can tell?

A. The arm bones and breast bone, and some pieces we found in the brush; the rest were cremated in the tent.

Q. How were the arm bones?

A. This way [indicating] across the breast bone and the hand.

Q. You saw the bones of the hand?

A. Yes, sir; I don't know which exactly. One of the middle fingers of one hand was stuck together.

Q. Turn so the jury can see you.

A. It was either like this or like that [indicating].

Q. Tell it so that the reporter can get it.

A. Crossways.

Q. There were across the bone that way?

A. Yes, sir.

Q. Were they lying on the breast bone?

A. Cross like this [indicating].

That is all.

85 Cross-examination by Mr. TOZIER:

Q. That is where the bones were?

A. We never touched anything—just the way we found it.

Q. Any flesh on the bones?

A. I could not tell; I never touched it.

Q. What time did you get down there?

A. Between six and seven o'clock; we had no watch.

Q. Did you go into the cabin?

A. We just go near the cabin—we went close to the fish rack here.
Q. Did you go inside the cabin where the fire had been that night?
A. No, sir.
Q. You went how far away to build your fire?
A. About eight feet from the tent.
Q. You say you heard the dogs making sound in the brush?
A. After we got there; once in a while they make a motion and go into the brush.
Q. Did you see them carrying anything?
A. No, sir; I saw what make the motion and my partner he call the dogs and they come back.
Q. The dogs knew him?
A. Yes, sir.
Q. But they did not know you?
A. No, sir; I was a stranger.
Q. How many times did they go into the brush?
A. Once in a while. The first time the' get around something.
Q. And then you went the next morning and found the bones?
A. That was the bones.
Q. How many bones did you find?
A. Four pieces of bone.
86 Q. Were they all piled up together?
A. They were there together.
Q. These bones which you speak of being brought out by the dogs?
A. They were laid together, and the dogs took them out.
Q. All told there were four pieces of bone?
A. Four pieces.
Q. You saw the dogs go in there during the night?
A. No, sir.
Q. Did you see them carry the bones away?
A. They were carrying the bones before we got there.
Q. How long did you stay there, all told?
A. We staid until the men came down, and then my partner staid there and I came to the coroner's jury trial, and then I went back with lunch and he was left there to pan out the dirt.
Q. Did you do any panning yourself?
A. A little; yes, sir.
Q. Had you ever done any panning?
A. No, sir.
Q. What kind of pan did you use?
A. A little pan.
Q. Did you use a pan?
A. Yes, sir.
Q. How many pans did you pan?
A. Half a dozen.
Q. Where did you get the dirt you panned?
A. They told us to dig down underneath the bed. We were digging there because we wanted to find nuggets. We could not find anything but lead.
Q. That was all you found?
87 A. Yes, sir.
Q. Did you take up all the ashes?

A. No, sir. We could not take all of it.
Q. Where did you find the biggest quantity of ashes?
A. Under the bunk.
Q. Whereabouts?
A. Close to the back end.
Q. Was the ground frozen?
A. Yes, sir.
Q. Was there any snow on the ground?
A. It was snowing that night a little—not much.
That is all.

Mr. HARLAN. Our next witness is Dr. Geho. He does not seem to be here, and I would like to adjourn for the noon hour at this time.

COURT. Very well.

Gentlemen of the jury, when court takes a recess it will be until 1.30 p. m. In the meantime you will remain in charge of the marshal, who will take you to your meals. In the meantime you will remember the admonition heretofore given to you, that you must not talk to any one nor permit any one to talk to you about this case. And if any person should attempt to talk to you about it you should inform them that you are on the jury. If they persist in it you should report the matter to the court, and the marshal will see to it that nobody talks to you.

Court will take a recess until 1.30 p. m.

88 Court convened pursuant to recess at 1.30 p. m., and the roll of the jury having been called and all parties being present, as heretofore, the following proceedings were had:

Dr. A. B. GEHO, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?
A. A. B. Geho.
Q. Where do you reside?
A. Fairbanks, Alaska.
Q. What is your profession?
A. Physician.
Q. How long have you been in Fairbanks?
A. Over a year.
Q. You are engaged in the practice of your profession?
A. Yes, sir.
Q. How long have you been a practicing physician?
A. Since 1897.
Q. From what college did you graduate?
A. University of Pennsylvania Medical College.
Q. I will ask you if you were called upon to go to what is known as the fish camp in the last part of last October for some purpose?
A. Yes, sir.
Q. By whom were you called?
A. The commissioner.
Q. For what purpose?

A. To review the remains of a man who was supposed to be murdered there.

Q. Tell the jury what you found.

89 A. We left here on Sunday morning, perhaps ten o'clock, and Mr. Hess and I walked down together. We went by the railroad grade and came in back of the fish camp. When we got out of the woods, as we came toward the camp, we found some bones lying in the snow and we stopped and examined them. They were probably fifteen or twenty feet from where the tent had been erected. Then we went over to where the rest of the part was. The commissioner and the men he took down with him were there before us. Then we began to look around, and I took out some bones from the ashes. Among them was almost all the skull of a man. It was almost intact, but when I took it up it crumbled in my hand, except the lower jawbone. The rest of the men were hunting around in the ashes and about the cabin. Then I walked back to where Mr. Hess and I had seen the bones on the snow. We found the sternum or breastbone with some flesh on it. A portion of the hand was upon it like that. I think one finger—I would not say for sure about that. Part of the humerus, the large bone of the arm, part of the thigh bone, and hip bone, and one portion of the arm—the shoulder portion. We staid quite a while, a hour or so, and hunted among the ashes. There was more ashes in that part of the tent. I picked up some chips close to the door that were not burned at all.

Q. Where did you find them?

A. Near the door or where the door was supposed to have been in the tent. We staid quite a while and they started to pan the ashes to see if they could find any money or gold or anything like that.

Q. Did you see them pan?

A. Yes, sir; I did. Then I came home with the jury that went down with us.

90 Q. State whether or not you found any teeth.

A. The teeth were intact in the lower jawbone.

Q. Were they all there?

A. I could not answer that question; I would not say that they were all there.

Q. Did you see any of the upper teeth?

A. I did not.

Q. What part of the body did you find?

A. We found the lower jaw, the skull, and part of the chest inside the walls of the tent.

Q. When you picked up the skull what happened?

A. The skull crumbled; I tried to lift it up in my hand, and it crumbled.

Q. Could you see the form, the shape, of it?

A. The shape was there.

Q. What did you find fifteen or twenty feet from there?

A. These other bones—the sternum, a portion of the shoulder bone, a portion of the humerus, and hip bones. They told me they had been carried there by the dogs.

Q. Was the building afire when you went there?
A. Some of the logs were smoking—the inside of the logs.
Q. Did you see the result of the panning?
A. Some portion of it.
Q. You did not stay until they got through?
A. No, sir.
That is all.

91 Cross-examination by Mr. TOZIER:

Q. Who was doing the panning?
A. I don't know; the men who were sent down there.
Q. Did you have any talk with them yourself?
A. Yes, sir.
Q. Did you see any human hair on the remains?
A. No, sir.
Q. Did you see any human skin on the remains?
A. No, sir.
Q. Did you see any of the flesh?
A. No, sir; only that which I saw on the sternum; more particularly between the ribs.
Q. When you saw the sternum it was some fifteen or twenty feet distant from the cabin?
A. Yes, sir.
Q. How many human bones were in this pile which was fifteen or twenty feet from the tent?
A. The sternum, the shoulder bone, the humerous, a portion of the hip, the thigh bone, and that portion of the hand.
Q. Which hand was it?
A. The left.
Q. Did you see any of the phalanges except the phalanges of the left hand?
A. I did not.
Q. Did you see all the phalanges of the left hand?
A. I did not.
Q. Did you see any of the wrist bones of the left hand?
A. Yes, sir.
Q. Did you see any of the bones of the right arm?
A. No, sir.

92 Q. What was the condition of the nasal bone at the time you saw the skull?
A. It all crumbled up; it was in sort of dust.
Q. The frontal bone?
A. It crumbled.
Q. The parietal bone?
A. The same way.
Q. Did you see any of the bones of the ear?
A. No.
Q. Did you see the upper maxillary?
A. It was there; it crumbled.
Q. The lower maxillary?
A. It was intact.
Q. Did you see the clavical?

A. Yes, sir.
Q. The scapula?
A. No, sir.
Q. Could you tell from what you saw as to the size of the head; whether it was a common-sized head, say one that could wear a seven, seven and a quarter, or seven and a half hat?
A. No, sir; I could not say.
Q. Could you tell from what you saw of the remains how long the corpse had been dead?
A. No, sir.
Q. Could you tell from the remains whether they were the remains of a male or female?
A. No, sir.
Q. Could you tell from what you saw whether they were the remains of a young person or an elderly person?
A. No, sir.
Q. Did you make any examination to discover the sex of the corpse?
A. No, sir.
93 Q. Did you afterwards see those remains?
A. I did not.
Q. Which hand was it you say was lying across the sternum of the corpse or body?
A. I think it was the left hand.
Q. Both of them were not lying across there?
A. They were not when I saw them.
Q. Were the bones of the arm and the bones of the trunk and the sternum attached when you saw them?
A. The hand was lying on that portion of the sternum.
Q. What part of the arm was gone?
A. All the arm was gone.
Q. All you saw was the portion of the hand below the wrist bone lying in a diagonal position across the sternum bone?
A. Yes, sir.
Q. Did you make any examination as to whether the hand was fastened to the sternum bone?
A. No, sir; I did not.
Q. What was the condition of the lower jawbone and the teeth?
A. They were intact.
Q. Did you make a minute examination of that?
A. Only examined it closely.
Q. Did you notice how many were left—if any had been removed?
A. I don't know; they were not all there.
Q. You don't know what caused them to be missing?
A. No, sir.
Q. How many human bones did you find inside and around near the rear end of the cabin or tent?
A. That is where the body and ashes all were, and the skull was there until I lifted it up, and then it crumbled and one clavical bone was all that I found there.
94 Q. Did the chest bone there show that it had been disturbed prior to the time you arrived?
A. It had been; I know that.

Q. Was there anything that you noticed in the bones you found some fifteen or twenty feet from the cabin that would indicate to you that these bones had been removed from the cabin?

A. There was ashes on the bones; the snow was tramped between those bones and the cabin. There was ashes on them; that was the only indication.

Q. That was the only indication that caused you to believe that they had been in the cabin?

A. Yes, sir.

Q. Who was with you?

A. The jury, commissioner, and Mr. Hess.

Q. Will you kindly name over some members of the coroner's jury?

A. Mr. Jelich.

Q. Did the coroner hold an inquest there?

A. Yes, sir.

Q. Who presided at that inquest?

A. The commissioner.

Q. Do you remember if you gave evidence at that inquest?

A. I did, here in the court-house.

Q. No evidence was given by you on the premises?

A. I don't think so.

That is all.

95 Redirect examination by Mr. HARLAN:

Q. What was the appearance of the ashes on the bones with regard to the length of time which had elapsed since they had been burned?

A. In some places close to the logs the ashes were still warm.

Q. On the bones?

A. The bones that were outside of the tent were cold. The skull was not very warm; I could handle it with my hands. The ashes were still warm.

Q. Doctor, you may state, if you can, what, in your opinion, would have been the condition of these burned bones being as they were if any length of time had elapsed prior to your seeing them.

Mr. TOZIER. We object on the ground that there is no evidence that Dr. Geho is competent to testify regarding the result of fire upon bones.

COURT. He is only asked to state his opinion. The objection is overruled and an exception allowed.

Q. I will ask the question more particularly in reference to the skull.

A. It was very porous—it crumbled.

Q. Could you state what that indicated as to the length of time it had been burned?

A. I only know that it was porous and crumbled; I could not tell how long it had been burned.

That is all.

96 Recross-examination by Mr. TOZIER:

Q. Have you had any experience in crematories?

(Objected to. Objection overruled and exception allowed.)

A. No, sir.

Q. Do you know at what degree of heat the human body is consumed?

A. I visited one crematory, and the gentleman who had charge of it told me that he would get the crematory up to fifteen hundred degrees Fahrenheit before he would push the body into it.

Q. Did you watch any corpse cremated?

A. Yes, sir; I did.

Q. What time elapsed from the time it was placed in the crematory until it was consumed?

A. It was a large body, and it took two hours and fifteen minutes.

Q. Did you see the remains?

A. I did.

Q. What was its condition?

A. The ashes were very fine.

Q. Do you know if a person who was subject to dropsy or who was a consumer of liquor to a great extent—if the body takes a longer period for cremation than one not so affected?

(Objected to. Objection sustained.)

Q. Did you ever witness the cremation of any other body except that one?

A. No, sir.

97 Q. Did you notice particularly, when you were at the premises where the remains were found, as to the character of the building that had stood there?

A. I did.

Q. What did you observe?

A. There was nothing left except some logs, and they were charred.

Q. Were they consumed?

A. At one end they were burned, but at the other end they were not burned much.

Q. Which end of the cabin was burned most?

A. The rear end.

Q. That would be the north end?

A. Yes, sir.

Q. Were those logs about there burned to any great extent or simply charred?

A. Burned to some extent.

Q. Did you notice whether the building had been banked up with mud on the outside?

A. I did not. There was snow on the ground.

Q. How deep was the snow?

A. Six to eight inches deep.

Q. Had it been snowing immediately preceding your arrival, do you know?

A. No, sir.

Q. Was the snow tramped down about the premises?

A. Yes, sir.

Q. Had you ever seen this cabin or tent prior to the time you went there with Mr. Hess?

A. No, sir.

That is all.

98 L. C. HESS, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you reside?

A. Fairbanks, Alaska.

Q. How long have you been a resident of Fairbanks?

A. Most of the time, I may say, since two years ago; I have been here and away.

Q. In what capacity were you acting up to July this year?

A. Assistant district attorney.

Q. As such did you visit a fish camp about the 30th of October last—a place known as the fish camp where a tent was burned?

A. Yes, sir.

Q. You may describe to the jury what you saw as near as you can.

A. We were called to go down and examine the remains of a man; I believe it was Sunday morning; I went down in company with the coroner and deputy marshal and the jury summoned for that purpose. The camp is about three miles below Fairbanks and is situated on the right-hand side of the river as you go down. There was at that place a tent which was used as a fish storage house. It was to the right of the one that had been burned—also a small dog house. I think it was to the left as you face from the river. When we arrived there we examined the condition of each of the small houses. The one in the center was the one that was burned. It was apparently a tent about eight by ten, I should say, that had been placed upon a foundation of logs, probably four logs high. They were small logs—

99 about sixteen inches high. This was apparently the foundation, and the tent had been built over it. There were some little pieces of canvas still attached to the logs. On the inside there were a number of household articles scattered around, some tin cans, and in the left-hand corner—the back part of the left-hand corner—was part of the remains of a human being. The bones were there—part of the skull and jaw bone, the lower jaw bone, and in which some of the teeth were still intact, and also part of the bones of the leg. These had been burned very severely and would crumble almost at touch. After looking around there a while, there was also a part of the trunk of a human body found, I might say, fifty or sixty feet from the tent that was burned, and to the back. These had apparently been taken away something and they showed that they had been burned. Both hands were folded over the breast, and part of the pelvis was also there—the lower bone.

Q. What was the condition of the breast bone, the sternum?

A. It was nearly burned—the whole body had been charred—and the breast bone had been gnawed.

Q. The sternum bone had been gnawed?
A. Yes, sir.
Q. Was there any flesh?
A. There were particles of flesh adhering to the trunk.
Q. Where were the logs burned most; what was the condition of the logs?
A. Probably about half consumed—the inner part of some; some nearly all burned.
Q. Any difference where they were burned in the cabin?
A. They were burned probably more toward the back of the cabin than toward the front.
Q. What do you say as to ashes; where did you find ashes
100 and what quantities did you find in different parts of the cabin?
A. As I remember, there was no great quantity of ashes anywhere, but there was some all over. Some of the ashes around the stove; there had not been a very hot fire there, because there was still some dry chips that had not been burned. The stove was sitting flat on the ground.
Q. Where were the bones that you have described?
A. As you face inward from the door they would be in the left-hand corner at the back of the tent.
Q. With reference to the wall?
A. In the back part, the head toward the left and the feet extending toward the right.
Q. Going in from the river you would go north.
A. Yes, sir.
Q. As you approach the inner end of the cabin the head would be to the left?
A. Yes, sir.
Q. You observed that from what you saw of the remains?
A. Yes, sir; they could be very easily seen.
Q. Did you make any examination of the ashes?
A. Yes, sir.
Q. What did you discover?
A. A number of things. The only thing that attracted my attention was some lead that had been melted.
Q. Did you see any gun?
A. There was a gun lying somewhat toward the front of the cabin; you might say almost in front of the stove—a part of a gun, the stock had been burned off. The gun was lying there pointing toward the bunk. It was a breech-loading gun, but there was no shells in it.
Q. It was empty?
101 Q. Where was the door situated?
A. On the side of the cabin next to the river. I believe in the center of it, as near as I could tell.
Q. The door had been on hinges?
A. Yes, sir; the hinges were lying there. One, I believe, was attached to a piece of board, a charred piece of board.
Q. The door was burned, except a charred piece to which the hinges were attached?

A. Apparently.
That is all.

Cross-examination by Mr. TOZIER:

Q. Where was the stove?
A. The stove was on the left as you enter.
Q. About how far from the door?
A. Only a short distance; probably two and a half feet.
Q. Did you notice how far it was from the wall—the wall in which the door is located?
A. The door was located in the front; about two and a half feet.
Q. Did you notice how far it was from the wall on the left as you went in?
A. I don't know that I noticed particularly, but I should say about eighteen inches.
Q. Did you notice how high it was from the ground or floor?
A. It was on the ground as it sat there?
Q. Did you notice the pipe—was it standing or had it fallen?
A. It was standing when I saw it.
That is all.

102 E. J. STIER, a witness produced on behalf of the prosecution, having heen duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What position were you holding last October at this place?
A. United States commissioner.
Q. As such commissioner did you hold an inquest at a fish camp down the river here?
A. No, sir; we never held an inquest there—that was held here in the court room.
Q. Did you go there to make an investigation?
A. Yes, sir.
Q. Did you make a minute investigation?
A. As good as I knew how at the time.
Q. You may describe the condition of the cabin as you found it.
A. It was evidently a tent built upon logs, about four logs high. On logs, I should say, six or eight inches through, and there were three of them standing; the back log—one at the back end—had fallen down—dropped off—but was still leaning in that corner. The logs at the back end were pretty badly charred. The door was in this end. The door was in the south end of the tent. The bed—the body—lay in the northwest corner, and that corner was burned the worst. The stove was standing here with the pipe still on it. All the canvas was destroyed. There was one of the small poles on this corner standing.
Q. On the northeast corner?
A. The northeast corner.
Q. Did you see any part of the remains of a human body?
A. There were a few bones which the doctor said were human bones.

Q. Did you examine the bones yourself?
103 A. I just saw them; I did not handle them.
Q. You did not handle them?
A. No, sir.
Q. Did you see the doctor handle them?
A. Yes, sir.
Q. Did you see some bone outside?
A. We were notified of the fire on Saturday—I think it was about three o'clock. We could not go down there until Sunday. I sent two men down there to watch the place. When we got there the bones had been carried out by the dogs—about, I should judge about fifty feet from the back end of the cabin—there was where the bones were found.
Q. Do you know how many bones?
A. No, sir.
Q. You did not write them down?
A. No, sir; I did not count them.
Q. Can you name any of them?
A. Part of the trunk, one shoulder blade, and part of an arm. One of the bones I would judge to be the upper bone of the arm.
Q. The upper part of the arm?
A. Yes, sir.
Q. Can you name any other parts of the trunk that you saw? Tell the jury the names, so that they will know.
A. No; I can not do that, not being a physician.
Q. Just tell what you found, then.
A. It seemed to be this part of the trunk [indicating breast] and part of the spine, and if I am not mistaken I saw part of the skull there also.
Q. Do you remember where you saw that?
A. That was found in the tent in the ashes.
104 Q. This part here is that called the breast bone?
A. No; it would be more of the ribs, as I remember it.
Q. More of the ribs?
A. Yes, sir.
Q. The other was what?
A. The shoulder blade, I think that is called.
That is all.

Cross-examination by Mr. TOZIER:
Q. You did not see the dogs carry any bones out?
A. No, sir.
Q. You only learned that from the two men you sent there?
A. Well, yes.
Q. Were the logs in the southerly part of the cabin badly charred?
A. No, sir.
Q. Were they badly charred on the westerly wall?
A. Only in the northwest corner.
Q. On the easterly wall?
A. Not so much as on the northwest corner.
Q. Nor on the northeast corner?

A. No; not so badly.

Q. The fire had been confined principally to the northwesterly corner of the cabin?

A. Along the north end of the cabin, and a little stronger on that end than any other place.

Q. Did you make such a minute examination of the entire premises as will enable you to describe them in detail—their size and the distances from the tent or cabin to the other tent or cabin?

105 A. On the left of the cabin, as you face the tent, I should judge not over eight feet from it, was a dog house, about four logs high. On the right of the cabin facing it was a tent that could not have been over ten feet from it. I did not measure it; I am only saying this from memory. That was still standing; it was not scorched.

Q. Were there any trees standing near the tent or cabin where the remains were found?

A. There was one, as I remember it, at the northeast corner, within about not over a couple of feet away—a small sapling; it was dead.

Q. Was it badly scorched, or did you notice it?

A. I never noticed.

Q. How far is the cabin from the bank of the Chena River proper?

A. I should judge about seventy feet.

Q. About how far distant is that cabin from the slough which puts off or into the Chena River near that place?

A. That would be between three and four hundred feet.

Q. And how far distant was the cabin from the trail—what was known as the trail to Chena?

A. I did not go back there.

Q. Which way did you go?

A. We went down the trail until we came to that slough; then we came around the slough to the camp.

That is all.

106 JOE SICA, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?

A. Joe Sica.

Q. Where do you live?

A. Fairbanks.

Q. How long have you lived in Fairbanks?

A. I am here about two years; I was on the creeks between times.

Q. Was that counting the time you were on the creeks?

A. I was on the creeks part of that time.

Q. You have been in this part of the country two years?

A. Yes, sir.

Q. This is your home?

A. Yes, sir.

Q. Where did you come from here?
A. Dawson.
Q. Did you know Jacob Jaconi?
A. No, sir.
Q. Never knew him?
A. No, sir.
Q. Do you know Perovich?
A. Yes, sir.
Q. Where did you first see him?
A. In Fairbanks last fall.
Q. When did you first see him?
A. Last fall.
Q. What time, do you know?
A. October some time.
Q. What part of October?
A. First part of October.
107 Q. How often did you see him during October?
A. Pretty near every evening.
Q. Every evening?
A. Yes, sir.
Q. For how long?
A. About three weeks.
Q. When was the last time you saw him before you heard of Jaconi's tent being burned down?
A. The last time I saw him, 29th of October, in the evening.
Q. At what time in the evening did you see him?
A. Between six and seven o'clock in the evening.
Q. Where was he?
A. In my cabin.
Q. In what part of town?
A. Third avenue, between Dinkle and Noble.
Q. Between Dinkle and Noble streets, on Third avenue?
A. Yes, sir.
Q. Was he in your cabin?
A. He was.
Q. Did you have any talk with him?
A. I did.
Q. When did you see him after that?
A. No, sir.
Q. Never saw him again?
A. No, sir.
Q. That was between six and seven o'clock on the evening of the 28th?
A. Yes, sir.
Q. Did he stay at your cabin that night?
A. No, sir; he went away; I never saw him any more.
Q. He went away between six and seven o'clock?
A. Yes, sir.
That is all.

108 PETER VIDOVICH, a witness produced on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?
A. Peter Vidovich.
Q. Where do you live?
A. Fairbanks.
Q. How long have you lived in Fairbanks?
A. Since the 27th day of June, 1904.
Q. What is your nationality?
A. I am a Slavonian; born in Austria.
Q. Did you know Jacob Jaconi?
A. I did.
Q. How long did you know him?
A. I knew him since 1900.
Q. Where did you first know him?
A. Dawson.
Q. State whether or not you were well acquainted with him.
A. I was pretty well acquainted with him.
Q. How frequently did you see him here after you came here?
A. Pretty near every day when he came in.
Q. Where did you see him when he used to come to Fairbanks?
A. He came to peddle fish.
Q. State whether or not he visited you at your house?
A. He did.
Q. Frequently or otherwise?
A. Very often.
Q. You may tell the jury where you last saw Jacob Jaconi and when.
A. I saw Jacob Jaconi on the 29th of October.
109 Q. The 29th of October. Where did you see him?
A. At my cabin.
Q. What time of the day?
A. About one o'clock in the afternoon.
Q. How long did he remain there?
A. About an hour and a half.
Q. Do you know what day of the week that was?
A. It was Friday.
Q. Then did you learn afterwards of his tent being burned down?
A. I did next day; evening—Saturday night.
Q. Then you saw him when with reference to the time the tent was burned? When had you seen him before that—was it the day before that?
A. Yes, sir; he came to my house.
Q. Did you see him after that?
A. I did not.
Q. He left your place about what time?
A. About two o'clock; probably half past two.
Q. Did you see any more of him in town that day after he left your house?

A. No, sir; I never went to the town myself. I was not feeling well.
Q. Where did he go?
A. He went past Dinkle street; he said he was going to Bryant & Wilson's to purchase a glass door.
Q. He was going down to the store?
A. Yes, sir.
Q. That was the last you ever saw of him?
A. Yes, sir.
Q. Have you ever seen him since?
A. No, sir.
That is all.
110 Mr. TOZIER. No cross-examination.
Mr. HARLAN. I do not want to take up the other matters with this witness at this time, and will want to recall him later on.
COURT. You will have an opportunity to examine him later.

RICHARD HEARN, a witness produced on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Chena.
Q. In the town of Chena?
A. Yes, sir.
Q. Where did you live last October?
A. Twenty miles from Chena.
Q. In what business were you engaged then?
A. Fishing business.
Q. Where did you live then—you lived there, did you?
A. Yes, sir.
Q. What did you live in?
A. In a cabin.
Q. How long had you been there in October—or when did you go there?
A. I was there the whole season—all the summer.
Q. You were there all summer?
A. Yes, sir.
Q. Where did you live before you went there?
A. In the road house about forty-two miles from Chena—the winter before last summer.
111 Q. Then you went up there in the summer?
A. Shifted from there to the fish camp.
Q. Did you have a partner?
A. My partner came down on the first of July; I was alone before that.
Q. How late did you stay there?
A. I staid there—I don't know what month I left. I left there and got my fish and went to Chena.
Q. You don't know what month it was?
A. No.

Q. Did you at any time see the defendant, Perovich?
Mr. Tozier. I object, if the court please.
Court. Why?
Mr. Tozier. I want the question more definite as to time and place.
Court. I think he may testify in a preliminary way.
Q. The question is: Have you ever seen Mr. Perovich?
A. Yes, sir.
Q. You may state where you first saw him.
A. Down at the camp.
Q. Who was with him, if anyone?
A. Nobody.
Q. What time did you see him—say, in the day?
A. In the neighborhood of half past three or four o'clock in the afternoon—in the evening.
Q. In what month?
A. Month of October.
Q. What time in the month?
A. The 29th.
Q. The 29th of October?
A. Yes, sir.
112 Q. On the 29th day of October between half past three and four o'clock?
A. Yes, sir.
Q. Did you have any conversation with him?
A. Yes, sir.
Q. Did he talk to you?
A. Yes, sir.
Q. What did he say?
A. He asked me how far it was to the next wood camp.
Q. What did you tell him?
A. I told him about three miles and a half.
Q. What did he say, if anything?
A. He said he did not think he could get across the river; the ice was running.
Q. Which side was you living on?
A. On the right-hand side going down.
Q. Where was the next stopping place or wood camp?
A. Three miles below on the opposite side.
Q. Did you tell him that?
A. Yes, sir.
Q. What did he say when you told him about that?
A. He asked if there was anyone at the camp and I told him three men were there cutting wood.
Q. How long did he stay at your place?
A. Over night.
Q. Did you have any more talk with him that night?
A. Not that I remember of.
Q. Did you observe what he had on?
A. Yes, sir.
Q. What kind of clothes?

A. He had a cord*a*roy coat, cord*a*roy vest, and a pair of overalls torn in the leg.

113 Q. State whether or not he left any clothes there.

A. Yes, sir; he left a shirt and a fur cap.

Q. How did he come to do that?

A. I asked if he had any overshirts—that I would buy one or two and he threw the shirt in to me from the outside of the cabin.

Q. Was that when he was leaving?

A. Yes, sir.

Q. Did you give him anything for them?

A. No, sir.

Q. What would you say as to whether or not this is the cap? [Shows witness fur cap.]

A. That is the cap.

Q. Examine this shirt. [Hands witness a shirt.] What would you say as to whether or not this is the shirt?

A. That is the shirt.

Q. What did you do with them?

A. The clothes?

Q. Yes.

A. I left the clothes there. My partner showed up from the Bonnifield country, and when he came back I started up town, on Monday, and he wore the clothes while he changed his—while he was washing his clothes.

Q. You put them in use?

A. He did; yes, sir.

Q. What was done with them, if anything afterwards?

A. He used them.

Q. What was done with them, if anything, afterwards?

A. Nothing, only he wore them.

Q. How did they get here?

A. Mr. Dreibelbis got them.

114 Q. When did he get them?

A. He got them the next day.

Q. Either the 30th or 31st?

A. Yes, sir.

Q. Did you see this corduroy coat and vest?

A. Yes, sir.

Q. What do you say as to these being the ones he wore?

A. This is the one he had on, and the vest also.

Q. Similar to the ones he had on?

A. Yes, sir.

Q. What time did he leave your place on the 30th of October?

A. Somewhere in the neighborhood of ten or ten thirty; I did not have any timepiece.

Q. What direction did he go?

A. Down the river.

Q. Did he eat with you?

A. Yes, sir.

Q. How many times?

A. Supper and breakfast.

Q. You may state if he told you where he was from.
A. Yes, sir; he told me he was from Fairbanks.
Q. Did he tell you his name?
A. Yes, sir.
Q. What did he tell you?
A. Charley something; I forgot his last name.
Q. State whether or not this is the man that had these clothes which you described [indicating the defendant].
A. Yes, sir; that is the man.
Q. State whether or not he said anything about his condition as to having money or anything to eat.
A. He told me he did not have any money or grub or clothes.
115 Q. Did he have anything carrying?
A. Yes, sir; he had a rifle and a canvas sack on his shoulder when he came to my cabin.
Q. What kind of a sack was that?
A. A heavy canvas sack.
Q. State whether or not there seemed to be anything in it.
A. It seemed to be about half full.
Q. It has never been in your possession at all?
A. No, sir.
Q. What kind of a rifle was he carrying—did you notice?
A. I had the gun in my hands, but I did not take notice of the calibre—whether it was a 44 or 30–30—I don't know which. It was a rifle, and it was loaded.
Q. Did you have any further talk with him while he was there?
A. We were talking there, but I don't remember what we were talking about at the time.
Q. Could you understand him?
A. Yes, sir; I understood him.
Q. Did he tell you where he was going?
A. Yes, sir; he told me he was looking for work; asked if I could not give him; that he would work for little. I told him I had no work for him.
That is all.

Cross-examination by Mr. TOZIER:

Q. How do you fix the date, Mr. Hearn?
A. It was Saturday on the 29th, and I came up to town on Monday. My partner got back on Sunday.
Q. You are positive that it was the 29th day of October?
A. Yes, sir.
116 Q. What is the distance your camp is below Chena?
A. Twenty miles by navigation.
Q. Twenty miles by river?
A. Yes, sir.
Q. How long had you been there before the 29th of October?
A. All the season.
Q. You mean by that, all summer and fall?
A. Yes, sir.
Q. Is your cabin near the the trail?

A. Right on the bank of the river.
Q. What kind of a cabin is it?
A. Twelve by twelve—a small cabin.
Q. How long did Perovich stay with you that night?
A. All night.
Q. What time did you say he arrived?
A. In the neighborhood of half past three or four o'clock.
Q. What kind of a day was it?
A. It was pretty cold the day before; it was a little blustery.
Q. Did you have any timepiece at your house?
A. I had a clock, but I did not have the right time.
Q. Was it correct?
A. I don't know; I am just guessing at that time.
Q. You might be mistaken an hour or three hours?
A. I hardly think so, because I asked two parties who passed a while before that.
Q. Did you get the time from them?
A. I did not look at my own timepiece.
Q. What time did he leave the next day?
A. Half past ten.
Q. In the morning?
A. Yes, sir.
Q. You say he said he was anxious to get work?
117 A. Yes, sir.
Q. Asked you for a job?
A. Yes, sir.
Q. What did you tell him?
A. That I had no work.
Q. Did you refer him to this other cabin down the river?
A. I referred him to the boys I knew down the river.
Q. Were there any steamboats there in winter quarters?
A. Yes, sir; the "Helen Bruce," and I forget the name of the boats that came down from above—the "Terrill."
Q. Any others there?
A. That is all I know of.
Q. Any cabins between your cabin and Chena?
A. There was several cabins; yes, sir.
Q. People residing in them last winter and fall?
A. There was.
Q. What was the nearest cabin to yours?
A. Why, it was the closest at the Indian village, six miles from Chena.
Q. No cabin between your cabin and the Indian village?
A. There is a cabin a little above mine.
Q. Where was the "Helen Bruce?"
A. She was below my camp six miles.
Q. Where, upon the trail?
A. Same place.
Q. Was there any steamboat between your place and the other boats?

A. Only the "Florence" between me and Chena.
Q. Where was she?
A. She was about nine miles below Chena.
Q. That was eleven miles from your camp?
A. Yes, sir.
118 Q. Many people pass your cabin?
A. Yes, sir.
Q. Were you below your camp at any time that fall?
A. I was down to those boats.
Q. Were you down to the other boats on the opposite side?
A. Yes, sir; the "Belle" and "Herman."
Q. Where did you next see Perovich?
A. I did not see him any more.
Q. Didn't you see him again?
A. I saw him at Mr. Gidding's camp two miles below. When I was going down Mr. Dreibelbis was taking him up. I happened to stop there when the boys were having lunch.
That is all.

Redirect examination by Mr. HARLAN:

Q. What would you say as to this being similar to the sack he had on his shoulder?
A. Yes, sir; it is similar.
Q. You did not inspect it. It is similar?
A. Yes, sir.
(Marked identification No. 5.)
Q. How far below your camp was the "Helen Bruce?"
A. About six miles.
Q. The next place below the boat?
A. Not that I know of.
Q. What was next stopping place below the "Helen Bruce?"
A. I believe there was a woodchopper's cabin below the "Helen Bruce." I don't know how far; I had not been there.
Q. The place you formerly occupied is how far down the river?
A. My old fish camp is about twenty-one miles from the place I was the year before.
That is all.

119 ROBERT KANE, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Down the river about fifty miles.
Q. About fifty miles from here?
A. Yes, sir.
Q. What did you do down there—what business or work?
A. Chopping wood.
Q. How long have you been chopping wood?
A. Since the 9th of October, last fall.
Q. The 9th of October, last year?
A. Yes, sir.

Q. Anybody with you?
A. My partner.
Q. What is his name?
A. Knud Johnson.
Q. Did you ever know or at any time see the defendant, Perovich?
A. Yes, sir; I saw him a couple of times.
Q. Where did you see him the first time?
A. I could not tell—either the last of October or the first of November.
Q. The last of October or the first of November; that was the first time you saw him?
A. Yes, sir.
Q. Where did you see him?
A. At the cabin.
Q. At whose camp?
A. At my camp, in the cabin.
Q. Your own cabin?
A. Yes, sir.
Q. What time did he come there?
A. About ten o'clock by our time.
Q. Before noon or in the evening?
A. In the forenoon.
Q. Did he say anything to you?
A. He asked if he could have something to eat, and we gave him something.
Q. You gave him something?
A. Yes, sir.
Q. Any further talk with him?
A. We talked some.
Q. What was said?
A. He said he was going down the river for some party—he had a note to some woodchopper to give him a few days' work.
Q. How long did he stay there?
A. Not long; about an hour or so.
Q. Did he tell you where he was from?
A. He said he was from town; I guess it was Fairbanks he mentioned.
Q. He said he was from town; he had nothing carrying with him?
A. No, sir.
Q. He had nothing at all?
A. No, sir.
Q. Did you see whether he had any jewel'ery about him?
A. No, sir; I did not see anything on him that morning.
Q. Did you at any time?
A. I did when he was there the last time—four or five days later.
Q. Four or five days later you saw him again?
A. Yes, sir.
Q. Did you see him carrying anything at that time?
A. No, sir.
Q. What did you see on him at that time?
A. He had a Yukon ring on his finger and he had a watch—a gold watch and a gold chain.

Q. Did you hear him talk about it—tell where he got it?

A. I said "It is a pretty good watch," and he said "Yes; it cost thirty dollars."

Q. Was anything said about the ring?

A. Well, he took the ring off his finger and showed it to us. I asked what it cost, and he said he paid eight dollars for it. I saw it was a fine ring. There was a *a* lot of engraving, and things on it, and the name; I don't remember whether it was Dawson or Yukon. On the inside was 14 karet and T. M. written inside, and he said he bought from a friend in Dawson.

Q. Bought it from a friend of his in Dawson?

A. Yes, sir.

Q. Did he say where he bought it?

A. No; I did not ask him.

Q. That was the last time you saw him?

A. That was the last time.

That is all.

Cross-examination by Mr. TOZIER:

Q. Did he offer to sell the ring to you?

A. No.

Q. Did you offer him anything for the ring?

A. No.

Q. How did the conversation come up?

A. He was showing it to us, and I remember my partner tried it on and could not get it off.

122 Q. That was the second time?

A. Yes, sir.

Q. How long a time lapsed between the first and second time you saw him?

A. Four or five days; I could not say for sure.

Q. When he left for the first time do you know where he went?

A. He went down the river.

Q. When you saw him the second time did he say where he had been?

A. He was down the river; he said worked three days.

Q. When he left the next time did he say where he was going?

A. He said he was going back to town. A friend of his was going to grubstake him and he was going down the river again.

That is all.

WILLIAM LODGE, a witness called on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?

A. Fairbanks.

Q. How long have you lived in Fairbanks?

A. Two years last April, off and on.

Q. Where did you live last October?

A. About fifty miles down the Tanana.

Q. What were you doing there?

A. Cutting wood.
Q. Do you know Robert Kane?
A. Yes, sir.
Q. Do you know where Robert Kane lived last October?
A. Yes, sir.
123 Q. Did you while you were there see the defendant, Perovich?
A. I did.
Q. This is the man sitting here [indicating defendant]?
A. Yes, sir.
Q. Where did you see him?
A. He came down to the wood camp where we were working.
Q. Did he have any talk with you?
A. Yes, sir.
Q. What was said?
A. He had a note which he brought from Dick Hearn, and on that note Dick wrote and said he was a friend of his, and said if we could help him out Dick would repay us. We told him we could not do that. He said he was going to fix a road house. We told him he could live with us. He worked three days, and then he fixed up the road house and worked about half a day and then he left.
Q. What direction did he go?
A. Up the river.
Q. What day of the month was that?
A. The first of November, about.
Q. You can not fix the day that he left?
A. I can not.
Q. Did you pay him for his work?
A. I did.
Q. What did you pay him?
A. Fifteen dollars for three days.
Q. Did he have anything with him?
A. Some clothes.
Q. Did you see the clothes?
A. I did.
Q. Did you see the clothes?
A. I did.
124 Q. In what was he carrying the clothes?
A. They were wrapped up in a sheet in a clothes sack.
Q. Did you see the clothes?
A. I did.
Q. How did you come to see them?
A. After he left us, one of the men from the telegraph station came up and told us about the murder and gave us his description, and it was the same as him, so we looked at the things in the sack to see if there was anything in there that would tell us anything.
Q. Where were they when you opened them?
A. In our road house. He left them there.
Q. He had gone up the river?
A. Yes, sir.

Q. What do you remember finding in the sack?
A. Some underwear, a suit of clothes, some handkerchiefs, an overcoat, and a pair of overalls.
Q. What was the color of the underwear?
A. Yellow mackinaw.
Q. How many pieces of garment did you find?
A. I don't remember how many.
Q. What did you do with them afterwards?
A. We left them in the sack until the marshal came down.
Q. What do you say as to these being the same kind or similar to what you found in the sack?
A. That is the same kind.
Q. Did you see what he had on at the time?
A. He changed and put a shirt of the same kind on.
Q. Did he change underclothing?
A. I did not notice.
Mr. HARLAN. I ask to have them marked for identification Nos. 6, 7, 8, and 9.
125 Q. What do you remember besides the underclothes that you saw?
A. A suit of clothes.
Q. What kind of clothes were they?
A. Light clothes; the pants were not quite the same, and the coat and vest.
Q. How were they as to color?
A. A dark suit; the pants was a little lighter.
Q. State whether or not there was an overcoat in the sack.
A. Yes, sir.
Q. What color was that?
A. A black overcoat.
Q. What did you do with those clothes?
A. We left them right there.
Q. Did you have any talk with him about the suit of clothes?
A. I did.
Q. What was that talk?
A. He wanted to sell them to me; he told me that his brother in Dawson gave them to him before he came down here.
Q. Was the pants there also?
A. Yes, sir.
Q. What was the difference in them?
A. I think the pants were a little lighter.
Q. Lighter in color?
A. Yes, sir.
Q. Did you observe them so that you could recognize them again?
A. Yes, sir.
Q. What do you say as to this being the pair of pants and the coat and vest that you saw in that sack?
A. I believe that is the coat; yes.
Mr. HARLAN. I ask that they be marked for identification Nos. 10, 11, and 12.
126 Q. Did you see a sweater in his possession?
A. Yes, sir.

Q. What color was the sweater?
A. A blue sweater.
Q. Examine this and see as to whether or not it is the same kind.
A. He was wearing it at the same time.
Mr. HARLAN. I ask that this be marked for identification No. 13.
Q. Did you notice any marks about it at that time?
A. No, sir.
Q. You did not observe that?
A. No, sir.
Q. Did you examine the overcoat?
A. No, sir; I did not—only noticed that it was a heavy overcoat.
Q. Would you be able to identify it?
A. Not for certain; I would know the overcoat.
Q. What was done with *with* all these things in this sack?
A. Some handkerchiefs.
Q. What kind of handkerchiefs?
A. A couple of silk handkerchiefs.
Q. Do you remember the color?
A. One was white, I believe, and the other was a different color; blue and red, I think.
Q. What was done with all these things in this sack?
A. They were left there until the marshal came down.
Q. Then what was done with them?
A. He took them up with him.
Q. What would you say as to this being one of the handkerchiefs?
A. It is one similar to that.
Mr. HARLAN. I ask that it be marked for identification No. 14.
127 Q. You say you saw a white handkerchief there?
A. Yes, sir: I believe there was.
Mr. HARLAN. I ask that it be marked for identification No. 15.
Q. You spoke of a pair of overalls—do you know whether he had them on or not?
A. He had them on when he came there.
Q. What was done with them?
A. I don't remember if he left them there or not.
Q. What color were they?
A. Blue.
Q. Did he give you anything or sell you anything in the way of clothing?
A. He gave me a pair of gloves.
Q. Anything else?
A. Some tobacco.
Q. What kind of tobacco was it?
A. Durham.
Q. How much?
A. Four or five packages.
Q. What did you do with it?
A. I used up part of a package and then I turned it over to Mr. Dreibelbis.
Q. What kind of gloves did he give you, do you remember?
A. Leather gloves.

Q. Do you know what kind of material they were made of?
A. They had some kind of woolen lining on the inside.
Q. You may examine these gloves and state whether you can identify them or not.
A. Yes, sir; I think they are the ones; I wore them for a while.
Mr. HARLAN. I ask that they be marked for identification No. 16.
128 Q. What was said, if anything, about the tobacco?
A. He said that he did not use cigarette, so he gave it to me—that is all.
Q. Any other trinkets or things that you remember?
A. He had a corduroy coat.
Q. Where was the corduroy coat? Was he wearing it or was it in the sack?
A. It was in the sack when he came there.
Q. What became of it when he went away? Was it left or did he take it away?
A. I don't remember.
Q. Here are several articles which I will ask you to look at to see if you can identify any of them?
A. He had a pair of German socks.
Q. What do you say as to whether they were of this kind or not?
A. I do not remember about it.
Q. Do you see anything else—any other socks among his effects?
A. Not that I remember.
Q. Did you see any neckties?
A. I saw some, but I could not describe them.
Q. Any other shirts that you remember his calling your attention to?
A. No, sir.
Q. You could not describe them?
A. No, sir.
Q. Do you remember whether there was any other handkerchiefs?
A. I do not.
Q. Did you find a pocketbook among them?
A. Yes, sir.
Q. Did you examine it?
A. I just looked at it.
Q. Any money in it?
129 A. No.
Q. What kind of a pocketbook was it?
A. A common, ordinary pocketbook.
Q. Was there more than one pocketbook there?
A. No; just one in the sack.
Q. Did you see whether or not he had one?
A. Yes, sir.
Q. What kind of a pocketbook was that?
A. One that you double up.
Q. Did he show that to you?
A. Yes, sir.
Q. When?

A. When I paid him and made change.
Q. Then he took his pocketbook out and put the money in?
A. He had a bill in it.
Q. What size bill?
A. A five-dollar bill.
Q. In what did you pay him?
A. A twenty-dollar bill.
Q. He had a five-dollar bill?
A. Yes, sir.
Q. Did he have any other money?
A. He had a gold piece.
Q. What denomination?
A. I believe it was a ten-dollar gold piece.
Q. Did you see any other money besides the ten and five?
A. No, sir.
Q. Look at this pocketbook—state whether or not it was similar to this one.
A. It was something very similar to that; it was a common one that folds.

Q. What would you say, in your opinion, as to whether or
139 not this is the same one?

A. I believe it is the same.

Mr. HARLAN. I ask that it be marked for identification No. 17.

Q. All the effects which you found in the sack which he left at your place—the sack and everything that was in it were turned over to Deputy Marshal Dreibelbis by you?
A. Yes, sir.
Q. Were all the effects that were found in that sack turned over to Marshal Dreibelbis?
A. Yes, sir.
Q. Were all the things that you turned over to the deputy marshal the things that were left there by the defendant, Perovich?
A. Yes, sir.
That is all.

Cross-examination by Mr. TOZIER:

Q. How far below Chena is your cabin, Mr. Lodge?
A. About fifty miles.
Q. How far below where the steamers tie up?
A. Ten miles in the winter time by the trail.
Q. Who else was at the place where you were working?
A. Henry Merring.
Q. Where is he?
A. Dead.
That is all.

Redirect examination by Mr. HARLAN:

Q. Did you have any talk with this defendant or did he have
131 any talk with you or your partner in your presence about holding people up; people in this country?

Mr. TOZIER. We object to that. It has nothing whatever to do with this case.

COURT. Objection overruled, and exception allowed.

Q. What was said?

A. He and my partner were talking one evening arguing about the different thing and talking about robbing different people rich and poor.

Q. What is that?

A. They were talking about robbing rich and poor people. Harry, my partner, said he did not have any use for anyone who robs people, and Charley said when Harry sells his wood I will lick him and get his money.

Mr. TOZIER. I move to strike it out.

COURT. Motion overruled, and exception allowed.

Q. Who was Harry?

A. My partner.

Q. Is Harry here?

A. No, sir.

Q. Is he living?

A. No, sir.

Q. Was there any talk about what he meant by the word lick?

A. No, sir.

Q. Now about this black suit—did he tell you where he got it?

A. That he got it from his brother, and that it was too small.

Q. Did he give you any reason for wanting to sell it?

A. That it was too small.

That is all.

132 Cross-examination by TOZIER:

Q. Did you hold many conversations while he was there?

A. We would be working together; talking right along.

Q. Do you remember anything else that took place between you regarding working for wages?

A. Not that I remember now.

Q. Where did he say he was going?

A. He said he was going back to get grub from Dick Hearn and come back down again.

Q. Did he tell you he was going to town?

A. No; he said he was going to see Dick.

Q. How long was he there?

A. Three days and a half.

Q. Was he there when the marshal came to get his things?

A. No, sir.

Q. Did the marshal ask you for these things?

A. Yes.

Q. You or your partner?

A. He asked me.

Q. Which marshal was that?

A. George Dreibelbis.

That is all.

GEORGE DREIBELBIS, a witness produced on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. You are a deputy marshal here?

A. Yes, sir.

133 Q. How long have you been here?

A. Since the first of September, 1904.

Q. Were you informed of the burning of the cabin of Jaconi?

A. I was.

Q. When were you notified?

A. On the 29th of October, in the afternoon.

Q. Did you go down there?

A. I did.

Q. When did you go?

A. On the morning of the 30th, on Sunday.

Q. Who went with you, if anyone?

A. Mr. Stier, Mr. Hess, Dr. Geho, Dr. Cutler, Mr. Ray, and several others, and some who were summoned as jurors for the coroner's inquest.

Q. What did you observe when you got there as to the condition of this tent?

A. The tent was gone and had evidently been completely burned down. We found the fire still smouldering in places on the logs that were there. There were four logs placed as a foundation and the tent was on a frame covering it over. Everything inside of the inclosure was completely burned up, except such things as the tin cans, stove, and gun barrel.

Q. What was the size of the tent?

A. It might have been eight by ten; I rather thought it was a ten by twelve tent.

Q. Where was the door located?

A. Centrally; in the front, facing the Chena River.

Q. What remained in the way of furniture that you saw?

A. Nothing left in the way of furniture, except the stove and some cooking utensils and dishes, and some empty cans which had originally contained oil. I don't know what kind—similar to the syrup cans you buy at the store.

134 Q. Where was the stove from the door as you go in?

A. To the left of the door.

Q. What kind of a stove was it?

A. An ordinary Yukon stove.

Q. What was its appearance; how was it sitting?

A. The stove was flat on the ground. It was sitting on the sand; nothing whatever under it.

Q. Any boards on the inside of the cabin left?

A. No flooring or anything; every vestige of everything that would burn was consumed with the exception of some chips near the stove. Some were not burned and some were charred and somewhat burned.

Q. How far was the stove from the wall?

A. Probably sixteen or eighteen inches.

Q. How far was the stove from that door?

A. Three feet from that door; that is, from the front of the tent.

Q. In your opinion and estimation, how far was the rear of the tent from the stove?

A. It might have been a ten by twelve tent—it might have been an eight by ten. I rather thought it was a ten by twelve; the stove, I should judge, was two and a half or three feet from the front side.

Q. That would make it how far from the rear of the cabin?

A. Seven or nine feet.

Q. The difference between ten or twelve?

A. Yes, sir.

Q. Could you tell where the bunk had been, apparently, from the appearance of things?

A. Apparently it had been across the back end of the inclosure. On the left side there was ashes and the remains—quite a
135 number of bones still there—very much burned.

Q. About what was the depth of the ashes at that part of the cabin.

A. The ashes and bones—I could not state the depth—there was quite a lot of ashes and bones, and we found some nails.

Q. How did the depth compare—by comparison in that part of the cabin with the front?

A. There was none in the front; comparatively speaking there was none there.

Q. Did you pan any of the ashes?

A. Yes, sir. We sorted over what was there; sorted out the bones and picked them up among us there.

Q. State whethere or not there was any trace of what appeared to be oil?

A. Well, I did not examine for that.

Q. Did you observe the outside places?

A. I did.

Q. What was their position as to the main tent that was burned?

A. There was a dog house to the left of the building; that is, as you face it—it was not over ten feet from the side of the tent—the living house—that was the dog house. That was on the left side about opposite to it. It was about eight feet—not over ten feet from the dog house to the side of the tent.

Q. Of what was the dog house constructed?

A. Small logs and chinked with moss.

Q. Covered with what?

A. Covered with dirt.

Q. Did you come up from the river bank?

A. To the left.

Q. Was there another tent there—was there a cache?

136 A. To the right of the tent and back—a little back of the back end of the tent—and about ten or twelve feet to one side. That was covered with bark, and it was full of fish.

Q. That was further away than the dog house?

A. I think it was a little further away.

Q. The dog house and cache were still intact?

A. There was nothing wrong with them.

Q. Anything indicating that they had been burned?

A. Nothing to show that they had.

Q. Did you find any stove wood about the house?

A. A few logs that had been burned, but no wood—no stove wood—or anything of that kind.

Q. How long were you there?

A. Probably a couple of hours; probably longer.

Q. What was there in the tent in the way of bones?

A. Inside the inclosure there were some; all the bones that were there were very much charred and burned. Apparently the leg bones of a man. You could tell the shape, but they had broken to pieces; also the thigh bone. We afterwards picked them up, but they were all in small pieces. The skull was inside the inclosure. When I first saw it it was intact, and you could readily see that it had been a human being.

Q. Could you see the outline of the head?

A. A very good outline. The upper part of the head was intact, and you could see the shape—the whole top of the head was held together at that time, and the jawbone was intact, but the face had sunk in.

Q. Did you see it picked up?

A. I don't think I notice' that.

Q. You have described what was in the cabin?

A. Yes, sir.

137 Q. Did you see any bones away from the cabin?

A. Outside the cabin, from thirty to fifty feet from the rear and a little to the left, we found some bones. We found what I took to be the breastbone or sternum, with a part of one hand across it and part of the fingers, and, I believe, the shoulder bone, too. They looked as though they had been gnawed by the dogs.

Q. Were the bones of the hand in any way stuck to the breastbone?

A. It appeared to be sort of melted together or stuck to the sternum.

Q. How long were you there?

A. About two hours; perhaps a little longer.

Q. You then returned to Fairbanks?

A. Yes, sir.

Q. Did you undertake to find the person who was supposed to have burned the cabin and robbed it?

A. I did.

Q. What did you do?

A. About that time—I think it was on the 3rd of November—there was a warrant issued for one Perovich. I might state at this time that the warrant was——

Q. You need not state that; that was not for this charge?

A. No, sir. On the morning of the fourth of November I proceeded to look for him.

Q. Where did you find the defendant and place him under arrest?

A. On the morning of the 5th of November—I should judge down the river about forty-five miles.

Q. At anybody's place?

A. Yes, sir; at the cabin of Knud Johnson and Robert Kane.

Q. Where was he when you first saw him?

A. I was going down the river; I almost missed the cabin.

138 I looked across the river and saw the cabin; as I started over I saw a man come in sight, and the man stood on the bank and watched me. Then I got where I could not see him and he could not see me. Then I looked over the bank—probably fifty feet away from him—and he was looking at me. He was watching me, and I walked up to him, and from the description I had I thought he was the person I wanted. I asked him what his name was, and he said Charley Mitchell. I said ain't you mistaken, and then he said his name was Charley Perovich. I immediately searched him and found a gold watch in his pocket and a small poke containing a twenty-dollar gold piece and a ten-dollar gold piece and a knife; later on I made another search and found a twenty-dollar Canadian bill in the left-hand pocket.

Q. Did you find anything else?

A. Well, that was about all; the poke——

Q. Have you those things in your possession?

A. I have.

Q. The watch and poke and money?

A. Yes, sir.

Q. Have you them with you?

A. They are in the safe.

Q. How far did this occur from the cabin of the woodchoppers which you named?

A. Not over ten feet from the cabin—close to the cabin. The trail runs right by the cabin. He had come out on this trail when he saw me and stood there watching me.

Q. You could see that he was watching you?

A. Yes, sir.

Q. Did you go into the cabin?

A. I did not; I did not at that time.

Q. Did you go into the cabin later?

A. I did.

139 Q. Did you get a bag of clothes from that cabin?

A. No, sir; that was Kane & Johnson's cabin.

Q. Where did you get the bag of clothes?

A. From Lodge's cabin.

Q. How far is it from Lodge's cabin?

A. About eight miles.

Q. Which direction is Lodge's cabin from there?

A. Down the river.

Q. What did you do with Perovich?

A. I brought him on in to Fairbanks. At the time I made the arrest he said, among other things, that he had a bag of clothes; was down the river at a place where he had stopped. I afterwards got a bag of clothes from Lodge and Maybrick.

Q. Where did he say he got them?

A. He said he got the watch and clothes; that he got them from two men; that he had traded a nugget chain to these men for the watch and that they had given him $11.50 in money for the nugget

chain. He said this nugget chain was one that he and his partner, John Haidukovich, had had made and that he had bought Haidukovich's interest in the chain, and that he had traded this chain to these two men for the sack of clothes and the watch and that they gave him $11.50 in money.

Q. Did he state to you the value of the chain?

A. I think not.

Q. Did he tell you where he got the chain you have described? Did he say he owned it all?

A. He said that he and Haidukovich had had it made and that he paid Haidukovich $15.00 for Haidukovich's interest in the chain.

140 Q. Where did you obtain the bag and the articles in it?

A. I returned a short time later and went down the river and received it from Lodge and Maybrick.

Q. They are the same articles that have been identified here?

A. Yes, sir.

Q. State if they have been in your possession—where you got them?

A. I got all the articles, with the exception of the light-colored shirt and the cap at Lodge's cabin; the shirt and cap I received from Dick Hearn.

Q. You had this entire bundle or collection of clothes and articles in your possession?

A. I have had all the clothes; everything in that sack has been in my possession all the time.

Q. All these small articles?

A. Everything that was in that sack has been in my possession all the time; all those small articles.

Q. You have examined these have you?

A. I have.

Mr. HARLAN. I ask to have these marked——

Mr. TOZIER. I object to them being introduced in that way.

Mr. HARLAN. I simply ask that they be identified as being the articles received by Mr. Dreibelbis from Mr. Lodge.

COURT. You might make an inventory or list of the articles.

Mr. HARLAN. We will furnish you a list of the articles, if you wish, Mr. Tozier.

Mr. TOZIER. All right.

COURT. Make an inventory of these articles and file it with the papers in the case.

141 Mr. DREIBELBIS. I might say there is one article which is not in the sack now which I found there.

Q. What is that?

A. A comb; I have that in the safe with the other articles.

Q. You might as well get the other articles—the watch and other things.

(Witness goes out and returns with various articles.)

Q. Is that the comb you found in the sack?

A. Yes, sir.

Mr. HARLAN. I will put this comb with the other articles.

Q. Have you the watch there?

A. I have.

Mr. HARLAN. I ask to have it marked No. 18.

Q. Where did you get this watch?

A. I took it from the person of the defendant, Vuko Perovich, on the fifth of November.

Q. What else did you find on his person?

A. I found this poke.

Q. What did you find in it?

A. A twenty-dollar bill and a ten-dollar gold piece.

Q. They are still in it?

A. Yes, sir.

Mr. HARLAN. I ask that it be marked No. 19.

Q. What else?

A. This knife I found on his person.

Mr. HARLAN. I ask that it be marked No. 20.

Q. Any of these other articles?

A. No.

Q. You may state how the defendant was dressed, as near as you can remember, when you arrested him.

142 A. He had on a blue sweater, which has been identified here in court; two of these undershirts; two of these undershirts.

Q. These yellow undershirts?

A. Yes, sir; he had two of these on and one pair of drawers. Over that he had a pair of yellow overalls, a pair of moccasins, and German socks.

Q. These are the ones he had on?

A. Yes, sir.

Q. The moccasins he had on are not here?

A. No; they were left with him.

Q. What kind of a suit did he have on?

A. He had nothing on but those things. Well, he had on a pair of silk gloves, which are among the effects.

Q. What was he wearing on his head?

A. He had a cap of some kind. I think it was a cap; I am not positive about it.

Q. If there is anything else you think of—I don't think of anything else now. If there is anything else in connection with this, you may state it.

A. I think that is all.

Q. I believe you stated that you arrested him on the 5th day of November—you returned at once with him here?

A. I did.

That is all.

Cross-examination by Mr. TOZIER:

Q. Did you have any conversation with the prisoner at the time you arrested him about the matter of Jaconi?

A. I did not.

Q. Have you since had any conversation with him about the

143 Jaconi matter?

A. On returning—I came up from Chena after night; it

was pretty dark—I asked if he knew the man who lived there. He said he had never been there and did not know him.

Q. At Jaconi's place?

A. Yes, sir.

Q. Did you tell him about what had happened at Jaconi's place?

A. Not at that time.

Q. Have you since told him?

A. I don't think I have. I had a conversation with him later about the Jaconi matter.

Q. Where was that?

A. At the office.

Q. Who was present?

A. Edgar Wickersham.

Q. Who else?

A. That is all.

Q. Did you bring him in to identify anything?

A. In reference to the chain and in reference to the two men who he said he bought the junk off.

Q. That is the only time you talked with him?

A. I may have talked to him again.

Q. Did you tell him what you were questioning him about?

A. Yes; he understood.

Q. Did you tell him?

A. Yes.

Q. Did you tell him that he was suspicioned of the crime of murder?

A. That was afterwards.

Q. Did you ever tell him he was suspected of the crime?

A. I did not at any time.

Q. How many conversations did you hold with him?

144 A. I may have had three; I know I had two.

Q. Did you ever have a conversation with him in the jail?

A. Yes; one in there and one in here.

Q. Did you have a conversation with him or did you use an interpreter?

A. I did not use an interpreter.

Q. Did you have Peter Vidovich here one time as interpreter?

A. Not as interpreter.

Q. Mike Torotich?

A. No.

Q. Neither of them?

A. They talked with him; I might have said something.

Q. You remember having a conversation with him?

A. I did not employ them as interpreters. I usually went in there when anybody went to see him—any of his people. I was usually there myself, and when Vidovich went in I think I was there.

Q. Were not Vidovich and Marovich both there at one time?

A. They might have been.

Q. Did you have one in there as a spy?

A. I was not there at that time.

Q. You knew about it?
A. No, sir.
Q. You had charge of the jail at that time?
A. Yes, sir.
Q. Was this prisoner told anything about what he was suspected of at that time?
A. I certainly think not.
Q. Did you ever bring him before anybody for identification?
A. I think not; there never was any question about identification.
Q. There never was any question about it?
145 A. No, sir.
Q. You never had any one identify him?
A. He never denied that.
Q. I will ask you if he was not asked about being in any particular place or any particular time?
A. I think not.
Q. You think not?
A. I am not sure; I would not say positively. There were so many other cases to think about.
Q. But this was an important case.
A. This is not the only important case.
Q. This is the most important one you have had during your régime here.
A. Probably.
Q. At the time you arrested him did he make any resistance?
A. No, sir.
Q. He came along with you readily, did he?
A. Yes, sir.
Q. From the time you arrested him up to now you never mentioned Jaconi's name to him?
A. No, sir; I did not.
Q. Did he mention it to you?
A. No, sir.
Q. When you came past the place you pointed out the place and asked him if he knew who lived there?
A. Yes, sir.
Q. Did you hold any further conversation with him at that time besides what you have stated?
A. No, sir.
Q. Did you hold any conversation with him immediately after he was placed in jail?
A. Well, I am not sure whether I did or not; I may have.
146 Q. How did you come to know where these articles were?
A. He told me.
Q. When?
A. When I made the arrest.
Q. He told you where the articles were?
A. Yes, sir.
Q. Did he tell you where they were?
A. He did.
Q. Did you go there and get them?

A. I did.
Q. Did you find things as he represented them?
A. The articles he enumerated were there.
Q. Did you go and get these articles before you brought him to Fairbanks?
A. No; I came on in and returned and got them.
Q. When did you go and get them?
A. A short time; three or four days, perhaps five or six; I can tell by looking at the record just when I did leave here and just when I returned.
Q. What articles did you say you took from the person of the defendant?
A. The watch, the poke with the ten-dollar gold piece in it, a twenty-dollar Canadian bill; the last was in his right-hand—left-hand—pocket; the watch was in the right-hand pocket.
Q. Upon the coat or vest?
A. The pants; he had no coat or vest on.
Q. Did you search him?
A. Yes, sir.
Q. Was anyone else present?
A. Either Kane or Johnson came up about the time I began to search him.
147½ Q. Do you remember which one?
A. They were both there before I was through.
Q. How did you bring him up?
A. I had a dog team.
Q. Did you have shackles on him?
A. No, sir.
Q. Did you have leg irons on him?
A. Never have when I am traveling on the trail.
Q. At the time you arrested Perovich did you question him?
A. I asked him where he got the watch.
Q. Did you ask him where he got it?
A. I think I asked him.
Q. You won't say that you did ask him about it there now?
A. I know he told about where he got the money.
Q. Did you ask him about anything else—any other articles?
A. I may have; I am not sure; I know he said where he got the money.
Q. You said that three times—you are not sure of the other?
A. I think he did.
Q. Your memory is poor now?
A. I simply say I am not sure.
That is all.

Redirect examination by Mr. HARLAN:

Q. You may state whether or not you recovered or got hold of a nugget chain described by Mr. Perovich.
A. There is a nugget chain in my possession, but it was not secured by me.
Q. Have you the chain with you?

A. I have.

148 Q. You may produce it.

(Witness produced nugget chain.)

Mr. HARLAN. I ask that it be marked No. 21.

Q. I will ask you if these are the socks that the defendant had on?

A. They are.

Mr. HARLAN. I ask that they be marked No. 22.

Q. Did he have an overcoat in the bag?

A. There was an overcoat in the bag when I got it.

Q. What color was it?

A. I would call it black—a short overcoat.

Mr. HARLAN. I ask that it be marked No. 23.

Q. Did you exhibit this chain to the defendant, Perovich, at the time you say you talked to him in the clerk's office?

A. I did.

Q. Did he look at it?

A. He did.

Q. What did he say about it?

Mr. TOZIER. We object to any statement this defendant made if he was not informed as to the reason he was asked the question.

Mr. HARLAN. He said to the marshal that he had traded a nugget chain for these clothes—for these articles—and that he received the watch and eleven dollars and a half in money, and the chain was shown to him to see if he could identify it.

COURT. Objection overruled and exception allowed.

Q. You may state if what he said to you was said by reason of your making any promises or threats or any inducements of any kind.

149 A. No threats or promises or anything of the kind; simply asked if he would know the chain if he saw it again, and he said he would.

Q. Did you present the chain to him?

A. Yes, sir; he said that he could, and he described the chain, the cost, and number of nuggets; but when the chain was presented he said that was not the chain which he traded; that he had traded nuggets enough to make up a chain; that they had not yet been made up.

That is all.

Mr. HARLAN. I wish to ask a few more questions.

Q. Now, with regard to coming up the river—returning with him to Fairbanks—you said in your cross-examination that you spoke of the cabin of Jaconi's, of his being there as you were passing by; where were you?

A. Right on the trail in front of the cabin.

Q. How far from it?

A. In plain sight. The trail at that time was in the middle of the river, and it crossed there, probably not over two hundred feet from the tent.

Q. The river was frozen then?

A. Yes, sir.

Q. You were traveling on the ice?

A. Yes, sir.
Q. With a dog team?
A. Yes, sir.
Q. What did you say?
A. I asked him whether he knew the place or not—the man there—and he said "No; never seen him; did not know him." I also asked if he knew Jaconi, and he said he never knew him.

150 Q. Did you talk with him at any time after you made the arrest with regard to going down the river, how he went from here to Chena?

A. Why, no; after he told about going down the river and where he got these goods, I think he told me that day when he was talking about the watch. He told me he met two men fifteen or eighteen miles below Chena; that these two men were getting dinner, cooking something, on the side of the trail on a stump, and that he had come up and begged for something to eat and that he was hungry; asked if these men would not give him something to eat; that he had no money—told them that he had no money, only the nugget chain, and he made the trade. They gave him this watch and the sack of clothes. He told me that he had left the sack of clothes down the river and that he had given the chain for $11.50 in money.
Q. Did he state what course he took in going from here to Chena?
A. He did not.
Q. Part of the conversation you had with him at the same time you had the conversation about the watch was with regard to these two men?
A. Yes, sir.
Q. What was said about that?
A. He described their appearance. One, he said, had a scar on his face. He said that he was young; that the other one was about thirty. He said they both appeared to be farmer Swedes. One was quite a good-sized man, and I think he said that one had a stubby beard.
Q. He said that he met them below Chena?
A. Fifteen or eighteen miles.
Q. Did he say what day?

151 A. The day after he left here. He told me that he had left; that he had gone from here and that he had staid on this side of the Chena River to a point opposite where the telegraph line crosses; that he had crossed there and got wet, and that he had stopped and built a fire, warmed himself, and had then gone on, and the next place he stopped was with these two men.

Q. The men he met on the trail—did he say when he met them?
A. He said he met them about eleven o'clock in the morning.
Q. He was going down and they up?
A. He was going down and he said they were going to Valdez, I believe.
Q. Did he say what time he left here?
A. He only spoke in reference to circumstances, which made it the 28th. He said he left here and went down on this side of the river.
Q. Where was the trail, at that time, from here to Chena?

A. The old summer trail that had been traveled some was from here to Hyde's ranch and then cross in a boat, but at that time I would not say the river was closed; that is, it was closed in different places and could be crossed at different places. While it was closed it was not strong enough to travel on.

Q. Where was the trail on this side of the river?

A. There is no trail; there was no trail on this side of the river.

Q. Was there a bridge here at that time over the river?

A. The bridge was here at that time.

That is all.

Recross-examination by Mr. TOZIER:

Q. Across the bridge to the trail going down on the other
152 side of the Chena River was the trail that most people used took in going to Chena?

A. Why, no; the trail which had been used most during the summer and fall was the trail on this side to Hyde's ranch; some used to go by the telephone line. After the ice started to run the trail changed.

Q. That was the trail you used?

A. At that time I did.

Q. That was the trail that would go down Cushman street here and cross the bridge and then down the telephone line?

A. Yes, sir.

Q. That trail was used more from about the 1st of October on, was it not; when the ice began to run?

A. I think it was used more after the ice began to run than it was before.

Q. How far is it from Hyde's place to here?

A. By the winter trail, I should judge, about seven miles.

Q. How far would it be from Hyde's place to the mouth of the Chena River?

A. About two miles and a quarter or two and a half by the winter trail.

Q. You did not mention Jaconi's name?

A. Yes, sir.

Q. You testified a while ago that you did not.

A. I may have.

Q. Then you did not state; do you know the man who lived here?

A. I did and afterwards mentioned the name Jaconi.

Q. How far do you figure it from here to Chena?

A. It is a little over ten miles from the court-house.

Q. By the winter trail?

A. Yes, sir.

Q. From here to the fish camp, how far?

A. About a third of the way—I consider it a little less.

153 Q. About three miles?

A. That is all; three miles or one-third.

Q. Can you make a diagram showing the location of these places?

A. I think so, in the main parts.

(Witness prepared a rough sketch.)

A. This is up and this is down. Here is the island. Jaconi's cabin was about here, perhaps it is a little——

Q. Just designate those by A, B, and C, so that the jury will understand it better.

A. Call A the tent or cabin where the remains were found. The remains were found in there. This is B, the dog house. C would be the cache where the fish was kept. D would be the trail and E would be the Chena River. F would be the Noyes' slough.

Q. Now, from the point A, the cabin, to the Chena River proper would be what distance?

A. Between fifty and seventy feet, about that.

Q. At that season of the year when you came up, what would be the distance around here from where the cabin stood?

A. Well, the bank is not very high. I could not state positively in reference to that, but from where the trail was, in the middle of the river, all those buildings were plainly in sight.

Q. How far down the Chena River were they plainly in sight?

A. The trail passed around and goes on down—about three hundred yards down it makes a bend and the trail goes into another slough.

Q. The trail follows another slough?

A. The winter trail crossed over into another slough.

Q. We will call that point G.

A. It crosses the slough and comes up on this side.

154 Q. Traveling on the left bank of the Chena River, the right hand as you ascend?

A. Not on the bank.

Q. On the river proper?

A. The trail came up along here and crossed this way.

Q. What distance would that be from the buildings?

A. I should judge one hundred and fifty or two hundred feet across the ice.

Q. Now show us where the trail followed the telephone line.

A. It came in here; from the telephone line to here, I would say, over a hundred yards.

Q. Would that be three hundred feet in a direct line?

A. In a straight line.

Q. This is known—F is known as the Noyes' slough?

A. The large slough which came in was called the Noyes' slough. That is all.

Redirect examination by Mr. HARLAN:

Q. There is another question. I ask you whether or not anything had burned outside of the walls of the tent?

A. Nothing whatever.

Q. No ashes?

A. None whatever. There were ashes from the fire which the two men we sent down had built. They had a fire there that night.

Q. You speak of the back end of the tent; where would you think the fire had been the hottest?

A. The fire was the hottest in the left-hand corner; it would be the northwest corner.

Q. What was the condition of the other corner?

A. It was not so badly burned. On the upper log—lying
155 on the top of the log was a ball of twine; it was simply scorched on one side; the outside layer was burned through—the outside of it.

Q. Which log was that on?

A. On the back end of the tent; there was also another ball of cord which had rolled off before I got there; it was outside.

Q. What was the status or condition of the logs as to being in place?

A. The logs were in place; they were not badly burned except in the corner on the inside.

Q. Had they tumbled down?

A. They had not; they were all in place.

Q. What about the dirt thrown up around the logs; were they banked up as high as the logs?

A. I think it was banked up; not very high, though. I am not positive about that; the back end and the side to the left was banked up.

Q. Did you make any observations of the door—the remains of the door?

A. The hinges had fallen on the ground where the door had been.

Q. How many hinges, what kind, and where were they?

A. Two strap hinges.

Q. Where were they lying?

A. Where they would naturally fall after they had burned out.

Q. Did you examine a lock, or didn't you find anything of that kind?

A. I did not find anything of that kind.

That is all.

156 WILLIAM LODGE, a witness recalled on behalf of the prosecution, testified as follows:

Direct examination by Mr. HARLAN:

Q. You stated in your testimony before that the defendant had a watch. State whether or not he told you where he got it.

A. He told me he won it in a raffle at Douglas.

Q. Tell the jury about it.

A. He said he bought three tickets. I forget whether it was fifty cents or a dollar a ticket he paid. The third ticket came out, and he won the watch.

Q. Did he have any other articles of jewelry with him?

A. He had a ring.

Q. Did you see the ring?

A. Yes, sir.

Q. Did you have it in your hands?

A. Yes, sir.

Q. Where did he have the ring?

A. On his finger.
Q. What observations did you make of it?
A. Simply that it was a large ring.
Q. What metal was it made of?
A. It had the color of gold.
Q. You did not inspect it carefully?
A. No, sir.
Q. Can you tell the jury any more about it?
A. I don't think I could.
Q. You were not asked about that before?
A. No, sir.
That is all.
Mr. TOZIER. No cross-examination.

157 L. B. ANDERSON, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. About halfway between here and Chena; about four and a half or five miles down the river.
Q. Did you know Jaconi during his lifetime?
A. No, sir; I did not know him only just by sight.
Q. You know where he lived?
A. Yes, sir.
Q. How far from your place?
A. About eight hundred yards in a straight line.
Q. In what direction?
A. Right up the slough. We were on opposite sides of the slough, but it was straight up the slough.
Q. You speak of the slough. What slough do you mean?
A. The Chena here; I call that a slough.
Q. You mean the Chena River or slough?
A. Yes, sir.
Q. You lived across the river?
A. He lived on one side; I lived on the other. He lived on the bank, and I lived a little back, about a hundred yards.
Q. Were you at home on the 28th of October?
A. Yes, sir.
Q. Did you see him that day?
A. Why, no, sir; I think I saw him on Thursday; the 28th would be Friday.
Q. When did you last see the tent in which he lived—the tent which was burned?
A. On Thursday; the last Thursday in October.
Q. Was he at home?
158 A. I was.
Q. You were at home?
A. I came up town.
Q. You could not see his tent from your place?

A. Not from my place; when he was on the bank of the slough we could see one another.

Q. Were you at home on the night of the 28th and 29th?

A. Yes, sir.

Q. Where were you on the morning of the 29th of October?

A. These men had been shooting around on the island where he lived all fall; I was down there with my partner——

Q. Where were you on the morning of the 29th?

A. In the cabin at home, and I was going to tell you we heard a shot in the morning. Our clock went off about twenty minutes after four—the alarm did—and it might have been ten or twenty minutes before the alarm went off that——

Q. What did you hear?

A. I heard a shot—two shots.

Q. Two reports of a gun?

A. Yes; and the dogs barking.

Q. How far were they apart?

A. I was sleeping when the first went off and that woke me up, and I heard the second shot.

Q. You heard the dogs bark?

A. Yes, sir.

Q. You frequently heard the dogs bark?

A. He had a little dog that barked a good deal.

Q. That was not unusual?

A. It was unusual at that time of night; I never heard them at night before.

Q. That would be in the neighborhood of three o'clock?

A. It would be some where about there; yes, sir.

That is all.

159 H. W. GIDDINGS, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?

A. Thirty-five miles below Chena.

Q. How long have you lived there?

A. Since last September.

Q. How are you employed?

A. At a wood camp.

Q. Were you there last October?

A. Yes, sir.

Q. In what work were you engaged then?

A. Cutting wood.

Q. Anyone with you?

A. No; I am alone.

Q. Thirty-five miles below Chena?

A. Just about.

Q. Did you at any time at your place see this gentleman sitting here [indicating the defendant]?

A. Yes, sir.

Q. When?

A. He came to my camp the last part of October or the first of November.

Q. You can not tell the exact date?

A. The reason I know it was the last part of October is that the steamer came up the 28th, and it was after that.

Q. How long after that?

A. Two or three days.

Q. Did he stop with you?

A. He stopped over night.

Q. Did you have any conversation with him?

160 A. Like a man usually has.

Q. Any conversation about where he came from?

A. He said he came from Fairbanks.

Q. Did he say where he was going?

A. About twelve miles below my place to start a bunk house in an old cabin that had been used for that purpose.

Q. Any one with him?

A. He was traveling alone.

Q. Did he have anything with him?

A. He had a war bag half full of clothes and a rifle.

Q. Do you remember how he was dressed; what kind of clothes he wore?

A. I think he had a pair of overalls on at the time.

Q. Do you know what color they were?

A. I would not say for certain.

Q. Did you particularly notice any of the rest of his clothes?

A. I could not say that I did.

Q. Did you give him something to eat?

A. Yes; I gave him supper and breakfast.

Q. Did you have any business transactions with him?

A. I bought a rifle and razor.

Q. What kind of a rifle?

A. A. 38–56 Winchester.

Q. Have you the rifle still?

A. Yes, sir; it is in the marshal's office.

Q. Where is the razor?

A. In my pocket.

Q. Did you pay him money for it?

A. I gave him a twenty-dollar gold piece for the rifle and box of cartridges. I gave him a five-dollar bill to pay for the razor, and he gave me some silver and a pair of socks.

Q. Where did he get the socks?

161 A. Out of the war bag.

Q. Was the razor in the war bag also?

A. Yes, sir.

Q. What kind of socks were they?

A. Woolen socks—kind of red and white.

Q. Will you let us see the razor you have in your pocket?

(Witness produces razor.)

Q. How much did you give for that?

A. The razor was to be two and a half, but I took those socks and he gave me a dollar and a half in silver.

Mr. HARLAN. I ask that this be marked simply for identification No. 24.

Q. What time did he leave the next day?

A. Right after daylight the next morning.

Q. Did you see him after that?

A. No; I did not.

Q. What is the next stopping place below you?

A. The next stopping place was about twelve miles; twelve or fourteen miles below me.

Q. What is the nearest place above you?

A. The steamboat.

Q. What boat was that?

A. The "Terrill" and "Helen Bruce"—the two were lying there.

Q. There was only those two boats?

A. Yes, sir; just the two.

Q. How far were they from your place?

A. A mile and a half or two miles.

Q. How much money did you pay him?

A. A twenty-dollar gold piece and a five-dollar United States bill.

Q. And he gave you back how much?

A. A dollar and a half in small silver.

162 Q. What time did he get there?

A. A little before dark.

Q. What time would you judge it to be?

A. About half past three or four—somewhere around there.

Q. In the evening or afternoon?

A. Yes, sir.

Q. What time did he leave in the morning?

A. Quarter after nine in the morning—a little after daylight.

Q. Did he tell you where he got the rifle?

A. I believe he did tell me that he bought the rifle—no, that he had traded it.

Q. That he bought the rifle or traded for it?

A. That he traded a 30-30 for this rifle with a partner of his or something.

Q. Is this a larger rifle than the rifle that he mentioned as having traded?

A. Yes, sir.

Q. You are not sure who he said he traded with?

A. No; a partner.

Q. Did he seem to be acquainted with you?

A. No; I never saw him before.

Q. From then when was the next time you saw him?

A. Not until to-day.

Q. Did you see whether or not he had any other money with him?

A. I did not.

Q. What did he have this silver in?

A. In a buckskin sack.

Q. A gold sack?

A. Yes, sir.
Q. Do you remember its appearance? Could you tell it again?
A. I might be able to.
Q. Was it dark or light?
163 A. I could not tell; I could not swear to it.
Q. Was it similar to this one?
A. Yes, sir.
That is all.
Mr. TOZIER. It is no more like it than any other sack like it would be?
A. No, sir; I guess not.
That is all.

JOHN J. BUCKLEY, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination:

Q. Where do you live?
A. At present in Fairbanks.
Q. How long have you resided in Fairbanks?
A. Since April 13, 1904.
Q. Were you here last October?
A. I was.
Q. With others did you go to the fish camp that Jacob Jaconi lived in after the tent was burned down?
A. Yes, sir.
Q. Was you one of the jurors?
A. No.
Q. You went at the time the others went?
A. I went down a couple of days after the jury went down.
Q. Did you make any inspection of the condition of the cabin or tent of the remains of the cabin?
A. I did.
Q. What was the condition at that time? Where did you find any ashes?
A. The only place I found ashes was where the body was found.
Q. What did you find?
164 A. I found that the sand and ashes had been saturated with oil.
Q. To what extent?
A. Right at the end of the cabin and along the side, the sand was saturated with oil.
Q. That was what direction from the entrance?
A. Say the entrance——
Q. We called the entrance the door on the south side of the tent; now where was this oil?
A. It would be right north of the door, facing the door on the opposite side of the tent.
Q. About how many feet in length did you find that condition?
A. For a space of about five feet from the back wall of the tent.
Q. Out from the tent?

A. There was some further out on the right side of the tent.
Q. On the right-hand side as you go in?
A. The oil was out further there.
Q. On the left-hand side?
A. That would be on the left-hand side.
Q. On the right-hand side facing the north, was there any there?
A. On the left-hand side there was no oil.
Q. To what depth was this saturated?
A. I dug about six or seven inches and I never got to dry sand.
Q. Tell the jury what made you think it was oil.
A. From the smell of common olive oil.
Q. At whose request did you go there?
A. Edgar Wickersham, who was then my superior officer.
Q. How was this, out about five feet from the wall?
A. Yes, sir.
Q. How far the other way?
A. About two feet.
165 Q. On which side of the cabin?
A. On the right-hand side looking north.
Q. Anyone with you?
A. Yes, sir.
Q. Who?
A. Smith Welsh.
Q. You went there to make an inspection of the situation?
A. Yes, sir.
Q. Any fire there when you went there?
A. No.
Q. The fire had gone out?
A. Yes, sir.
Q. What was the appearance of the logs?
A. The logs were burned considerably on the inside.
Q. Were they in place—the logs?
A. Yes, sir.
Q. Could you see if anything had burned outside?
A. I noticed a tree to the right-hand side of the tent looking north; it was burned a little, but the limbs that were over the tent were hardly scorched at all.
Q. Anything else you noticed outside?
A. Nothing but a fish shed. I believe there was a cache there. There was a big frame there.
Q. Could you see the dog house?
A. Yes.
Q. How far was that, do you think?
A. About twenty feet; it might not be that far, sixteen or eighteen feet.

That is all.

166 Cross-examination by Mr. TOZIER:

Q. Where did you say the oil was—on which side of the cabin?
A. On the right-hand side as you go in.

Q. That would be as you entered the door—the oil would be on the right?
A. Yes, sir.
Q. About how much?
A. It ran about two feet out from the wall.
Q. Where did it commence?
A. At the opening in the tent.
Q. The opening in the tent?
A. No; in the side of the tent; it seemed where the window was.
Q. How far was that from the back of the tent?
A. Four feet from the back end of the tent.
Q. That would make a place about two by four feet in area?
A. Yes, sir.
Q. Did you dig down into the sand?
A. About five inches.
Q. Did you dig down more than one place?
A. Yes; one place about six or seven inches.
Q. Was the earth frozen?
A. I had to dig with my hands, and I never got to dry sand.
Q. You dug down about seven inches and did not strike dry sand?
A. No, sir.
Q. Did you strike frozen ground?
A. It was still oil; I could not tell what it was.
Q. Did you get to the bottom of it?
A. No.
Q. There was not so much oil to the right as there was where the bunk had been?
A. No.

That is all.

167 COURT. Gentlemen of the jury, when court takes a recess it will be until 9.30 to-morrow morning. You will remain in charge of the marshal as heretofore. You will remember the admonition the court has heretofore given you—not to talk to anyone nor permit anyone to talk to you except about the common necessities of life.

The marshal will take charge of the jury, and court will take a recess until 9.30 to-morrow morning.

168 FAIRBANKS, ALASKA, *August 2, 1905.*

Court convened at 9.30, all parties being present as heretofore. The following proceedings were had:

COURT. Call the roll of the trial jury.

Whereupon the clerk called the roll of the trial and all answered to their names.

COURT. The jury is present, gentlemen. Go ahead with the case.

Mrs. MINER BRUCE, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Chena.

Q. What is your husband's name?
A. Miner Bruce.
Q. Where is he?
A. I hope in Seattle.
Q. How recently did he go?
A. Two weeks ago last Friday.
Q. Is he the owner of a boat called the "Helen Bruce?"
A. He is not; he is the agent for it.
Q. Where were you last October?
A. We were tied up at the Big John slough on the 27th of October.
Q. How far is that from Chena?
A. It is called thirty miles by the winter trail.
Q. Where were you living—living on the boat?
A. Yes, sir.
Q. You and your husband were there?
A. Yes, sir.
169 Q. How long were you there?
A. We remained there until the middle of last May, at the opening of navigation.
Q. Did you ever see this man here, sitting by Mr. Tozier?
A. Yes, sir.
Q. Where did you see him?
A. He came aboard the "Helen Bruce" last fall, a few days after we tied up.
Q. What time of the day did he reach there?
A. Early in the afternoon. I think about two o'clock; between two and three o'clock. It grows dark early at that time of the year.
Q. What day?
A. A very few days after we stopped there. It was previous to the fifth of November, for we made a note in our diary.
Q. What made you make a note of it?
A. Marshal Dreibelbis passed there and we made a note of it—that he had passed there.
Q. That was after you arrived and before the fifth that this man was at your place?
A. Yes, sir.
Q. What, if anything, did he say to you or your husband when he came?
A. He asked if he might stay all night. We told him that we had no accommodations, and he said he was hungry, and Mr. Bruce told him to come in and get something, and then we directed him to a cabin two miles below by the trail, where he could probably stay all night where there was a man alone.
Q. Did he say where he came from?
A. He said he was from Chena; that he had a hard time; had been unable to earn any money, and was on his way to a woodchoppers' camp. He said it was fifteen or eighteen miles from where
170 we were.
Q. How was he dressed?
A. Very poorly, I should say; I think he had overalls on and they were ragged, and I thought he—my impression was that he was

cold. I know I felt sympathy for him and made a hot fire and had him sit there and get warm.

Q. How long did he stay there?

A. Between an hour and an hour and a half.

Q. Did he carry anything with him?

A. He left a bundle at the door; I could not state what it was; it was a sack or bag or something. He stood a rifle up inside the door.

Q. In the cabin?

A. Yes, sir.

Q. Did you pay any attention to the bag?

A. No; I did not. I simply saw him lay something down outside. I think perhaps I felt a little curiosity, because he said he had no blankets and the he was cold, and that was one reason why he wanted to sleep at the house.

Q. Did you ever see him before that?

A. Not that I know of.

Q. Did you ever see him after that?

A. No, sir.

Q. Do you know of anything else that happened?

A. Nothing that I think of.

Q. Did you notice whether or not he had any jewelry or a watch on him?

A. No, I do not; I have no impression of any jewelry. No, he showed nothing; I saw nothing.

Q. You can not tell about his coat whether he had any on at all?

A. I don't think he did.

That is all.

171 Cross-examination by Mr. TOZIER:

Q. You say your boat was tied up about thirty miles below Chena at Big Johns slough?

A. Yes, sir.

That is all.

JOHN JALONENE, a witness called on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?

A. John Jalonene.

Q. You live in Fairbanks, don't you?

A. I have been here a month.

Q. Were you here last fall?

A. Yes, sir.

Q. In the month of October?

A. Yes, sir.

Q. Do you remember when the fire occurred at the fish camp?

A. Yes, sir.

Q. Were you in Fairbanks about two weeks before that?

A. Yes.

Q. Did you see this man here about two weeks before that occurred?
A. Yes, sir.
Q. Where did you see him?
A. In the Lacey saloon.
Q. In Fairbanks?
A. Yes, sir.
Q. Did you have a talk with him at that time?
A. Yes, sir.
172 Q. Will you tell the jury what was said?
(Objection. Objection overruled and exception allowed.)
A. I was in the saloon, standing up. I heard Perovich say "Come outside," and I went out. He ask me if I am broke; I said, "Yes; I am broke." He said he broke too. I said, "I don't know how to help it." He says he know where some money is; if had a partner he can get.
Q. Where did he say this money was?
A. He told that afterwards.
Q. Go on.
A. He asks me if I will go and get that money. I said I don't want to; I don't want to take no money. He said it was five miles above Chena.
Q. Did he tell you how he was going to get it?
A. He said he was going into the cabin. He said two men lived in the cabin and worked in the daytime.
Q. Two men lived in the cabin and worked in the daytime?
A. Yes, sir.
Q. What else happened; what did he say, or you say?
A. He say he got five hundred dollars in cabin—five hundred dollars, and he said he got watch and watch chain and ring and shotgun.
Q. Did he say anything about the dogs?
A. He said the dogs know him all right.
Q. The dogs knew him?
A. Yes, sir.
Q. What did you say to him?
A. I did not say anything; I left. I asked him if you think I would do that. He says he did not care, that he had to rustle some money some way.
Q. That he was broke and had to rustle some money some way?
173 A. Yes, sir.
Q. Did you agree to go with him?
A. No.
Q. What did you do, if anything?
A. I walked away.
Q. That was the last talk you had with him?
A. Yes, sir.
Q. That was in Fairbanks here?
A. Yes, sir.
Q. In front of the Lacey saloon?
A. Yes, sir.
Q. About two weeks before the 29th of October?

A. Yes, sir.
That is all.

Cross-examination by Mr. TOZIER:

Q. Where were you born? What is your native country?
A. Finlander.
Q. How old are you?
A. Twenty-two.
Q. When did you leave Finland?
A. Four years ago.
Q. Where did you come to first?
A. Michigan.
Q. How long did you stay there?
A. One year.
Q. Where did you go next?
A. Dawson.
Q. How long in Dawson?
A. Two years.
174 Q. How long here?
A. One year.
Q. What have you been doing here?
A. Working.
Q. Whereabouts?
A. On Cleary.
Q. Mining?
A. Yes, sir.
Q. When did you work on Cleary?
A. I quit there first of last month.
Q. When did you go to work there?
A. I went after Christmas.
Q. What month did you go there?
A. First of July.
Q. Last July?
A. Yes, sir.
Q. Did you go to work?
A. No; I came here last.
Q. When did you first come to Fairbanks?
A. Last summer—in July.
Q. Where did you go to work?
A. I went on the creeks, and I worked there a few days and worked two weeks another place and another place a week and a half.
Q. When did you come in?
A. I came in when the creeks were frozen.
Q. That would be in September?
A. I don't remember.
Q. Had you been paid for your work?
A. Yes, sir.
Q. Had you saved your money?
A. I had some money.
Q. Did you tell him you were broke?

A. I said I was
175 Q. Where were you standing?
A. Alongside the stove.
Q. You don't know that he ever saw you before?
A. Yes, sir.
Q. He said come outside?
A. Yes, sir.
Q. You spoke first?
A. No, sir.
Q. What language did you speak?
A. English.
Q. Where were you talking?
A. In a little place between the two saloons.
Q. How long did you talk?
A. Maybe twenty minutes.
Q. What were you talking about?
A. I don't hardly understand what he talk.
Q. Did he seem to understand you?
A. Yes, sir.
Q. Did you speak better English at that time?
A. I—not at that time.
Q. You spoke better English than he did?
A. I talk better English than I did then.
Q. You talked better English than he did?
A. No; he talked better; I don't know, hardly.
Q. Who spoke the best English when you were talking out there?
A. Well——
Q. You understood what he said?
A. Yes.
Q. Could he understand you?
A. I don't know.
Q. A moment ago you said he did.
A. Well, I understood what he told me.
176 Q. Do you remember what else you talked about, generally?
A. No.
Q. Did he say he was going to kill anybody?
A. He did not tell me that he was going to kill anybody. That he was going to get the money and come back.
Q. He said five miles above Chena?
A. I understood he said five miles.
Q. He said there were two men?
A. Yes, sir.
Q. He said they lived there?
A. Yes, sir.
Q. He said they had money?
A. Yes, sir.
Q. Other things there?
A. Yes, sir.
Q. You understood him thoroughly?
A. Yes, sir.
Q. You don't remember anything else that you talked about?

A. I did not talk to him.
Q. Have you talked to him since?
A. Yes.
Q. Did you see him afterwards?
A. Yes, sir.
Q. Where did you see him?
A. Five or six days—he came in town again.
Q. Did you speak to him?
A. Yes, sir.
Q. Did he speak better English that time than the time before?
A. No, sir.
Q. Did you talk to anyone about it?
A. John Mullen.
Q. John Mullen was the first man you ever told about it?
177 A. Yes, sir.
Q. Did you tell the deputy marshal?
A. Afterwards—after I talked to John Mullen.
Q. Were you in the jail here?
A. Yes, sir.
Q. Who was in the jail with Perovich at that time; the same one that asked you about him?
A. Yes, sir.
Q. Did he point him out and say, Is that the man that talked to you?
A. Yes, sir.
Q. He said that is the man that talked to you?
A. Yes, sir.
Q. You say you did not speak of this to anyone?
A. No, sir.
Q. When he was talking to you in front of the Lacey saloon and you were talking with him, how long did you talk?
A. I did not have any watch; fifteen or twenty minutes.
Q. You had never seen him before?
A. No.
That is all.

178 PETER VIDOVICH called and sworn as an interpreter.

ANTON BALISH, a witness called on behalf of the prosecution, being duly sworn, testified, through the interpreter, as follows:

Direct examination by Mr. COHN:

Q. Where do you live?
A. Cleary Creek. He says Cleary Creek, gentlemen.
Q. Do you know Vuko Perovich?
A. He know him.
Q. Is that the man sitting here?
A. He says "Yes."
Q. How long have you known Vuko Perovich?
A. First acquaintance he met in Douglas Island.
Q. What year was that?
A. About two years ago.

Q. Did you know Vuko Perovich in Fairbanks along last fall, say during the month of October?

A. He says that he knows that they came from Chena together.

Q. Ask him if he knew Perovich here during October?

A. We came together.

Q. Did you know him in Fairbanks last fall, and did you see him here?

A. He say when we came here he see him here; he don't know what month it was last fall.

Q. Do you remember when the fish camp down the river was burned last fall?

A. He don't know, he says.

Q. Did you hear of its being burned?

A. He says he heard; he was not here; he was some place chopping wood.

179 Q. Did you, about three weeks before the time you heard that the fish camp was burned, have a talk with Vuko Perovich?

A. He does not answer the question. He says he was chopping wood.

COURT. You tell exactly what he says.

Q. Did you, about two or three weeks before you heard of this fish camp being burned, have a talk with Vuko Perovich, the man sitting here, the defendant?

A. He says he was on the creeks when it was burned.

Q. Did you see Vuko Perovich before the fish camp was burned?

A. He says "Yes; when he was cutting wood."

Q. Where was that?

A. On Archie Burns' homestead.

Q. Did you have a talk with Perovich last fall?

A. Yes; he was camping there; out there camping. There were four men in the cabin.

Q. How long was it that you had this talk with Perovich before you heard that this fish camp was burned down the river?

A. He says about two weeks.

Q. At that time and place did Vuko Perovich make a proposition to you of any kind?

A. Yes.

Q. Tell what he wanted you to do.

A. He came there one morning and my partner. He says his partner wants him to get some money from Archie Burns. That is the time Vuko Perovich came to town. He went with him to Fairbanks; that Perovich wanted this man to go with him. He ask him to go to Chena. We can go to Chena. He ask him what I going to do at Chena? He says when I was sleeping in some road house—one he had money—he change some money. I will go down; he needs a partner.

Q. What did Perovich say to you?

A. I staid there all night. I gave him a bill to change; I
180 see him have a big roll; I get it. [Witness indicates size of roll.]

Q. Did he say how he was going to get this money?
A. He says we will steal it.
Q. He says we will steal it?
A. Yes, sir.
Q. Did he see how much money he had—the man he wanted to rob?
A. He said that Perovich did see considerable money; no tell him how much the man had.
Q. Where was this that you had this talk with Perovich?
A. The time that he came from the cabin to town, near Archie Burns' cabin.
Q. Near Fairbanks?
A. Yes, sir; near Fairbanks.
That is all.

Cross-examination by Mr. TOZIER:

Q. Where were you born?
A. He says he was born at town called Zernovia.
Q. What countyman are you?
A. He says a Slavonian.
Q. What country does he belong to, what empire, what king—what ruler?
A. He is an Austrian, French country.
Q. How old are you?
A. Forty-five.
Q. What time did he leave Austria?
A. It is a little over four years ago.
Q. Can you read and write?
A. Very poor, he says.
181 Q. Do you believe in God?
A. He believes.
Q. What is your religion?
(Objected to as not proper cross-examination. Objection overruled.)
A. He is a Catholic.
Q. What kind?
A. Catholic.
Q. A Roman Catholic or Greek Catholic?
A. He is no Greek Catholic.
Q. How far is his country from Montenegro?
A. He can not tell; he don't know where Montenegro is.
Q. How many times did you talk with Perovich on Douglas Island?
A. He see each other—they work sometimes day shift and sometimes night shift.
Q. How many times did he see and talk with Perovich since he has been here?
A. He say he see Perovich in the cabin where they live in the woods across the river. Sometimes he see him here.
Q. How many times did he see him there?
A. First five men and at last three men.

Q. What countrymen are they?

A. He says he is alone Austrian; the others says Montenegro.

Q. How long did you live there?

A. They was together about a months; maybe more or less.

Q. How many Austrians and how many Montenegroians?

A. There are five altogether first, and this witness was alone Austrian Slavonian, and the rest were Montenegroes. At last it was two Slavonians.

Q. What were the names of the Montenegroians?

A. He says he know one by Mat and one by Sam.

182 Q. Is that the only name you know them by?

A. He don't know the last name.

Q. Do you know what part of Montenegro they were born in?

A. He didn't know it.

Q. Did you tell them what part of Austria you were born in?

A. He says they had talk—that he had told them where he came from; where he was born.

Q. Did you speak the same language as they?

A. It is nearly alike; there is little difference.

Q. Were these Montenegroians members of the same religious church or body as yourself?

A. He don't know.

Q. When you had the talk with Perovich was there anybody else present?

A. Nob'y but Perovich and himself at the time he came into town across the river to get his money—the witness to get his money.

Q. Get his money from where?

A. From Archie Burns for the wood.

Q. Where did you and Perovich have this conversation?

A. Near the Archie Burns cabin; between that place which is now hothouse and Archie Burns's cabin.

Q. How long did you talk?

A. He answer my question. I don't see him since he went to the creek. Of course some of his friends call him on the Greeks to go to work.

Q. Ask him if he said anything to Perovich at that conversation about not murdering.

A. He says no.

Q. Ask him if he said anything to Perovich about killing men at that conversation.

A. He says no.

183 Q. Ask him if he said anything to Perovich at that conversation about a Greek-Catholic son-of-a-bitch.

A. He says no.

That is all.

Redirect examination by Mr. HARLAN:

Q. How long were you at Douglas Island when the defendant, Perovich, was there?

A. He answers—he says he was in Douglas Island for about two years and a half, and then he went from Douglas for two years and a half—went to Seattle and came back to Douglas.

Q. How long was he there at Douglas when Perovich was there?
A. He says he saw him there six or seven months—a year.
Q. What were they working at, he and Perovich?
A. He says he was around the grates—dumping grates.
Q. Working in the mine?
A. Perovich was on drilling machine breaking rock—around machine.
Q. Were you well acquainted with him?
A. Occasionally he saw him, just like anybody else. Also Perovich's brother.
That is all.

184 JOHN STRATTON, a witness, called on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. I have been on the creek most all winter—in Fairbanks since last fall.
Q. Do you know the defendant, Perovich?
A. Yes, sir.
Q. When did you first know him?
A. On Douglas Island; in the Treadwell mine.
Q. How long did you know him there?
A. He came there, I think, in June, 1903. His brother made me acquainted with him; told me he was his brother.
Q. Did you see him after you came to this country?
A. I came here first on the 1st of July. I saw him working in a restaurant, by sight, through the window.
Q. Whereabouts, here in Fairbanks?
A. Yes, sir.
Q. Did you see him afterwards?
A. Yes, sir; several times, either in the saloon or gambling places.
Q. Did you see him at any time in Chena?
A. Never met him in Chena.
Q. Did you go with him on the trail between here and Chena?
A. Yes, sir. One evening we went down to Chena.
Q. When was that?
A. The 20th of October, last year.
Q. Last year?
A. Yes, sir; 1904.
Q. How did you go?
A. We walked down.
185 Q. What trail did you go?
A. We crossed the bridge and took the other side of the slough. He said that was the best road.
Q. The defendant said it was the best road?
A Yes, sir.
Q. Did you pass any tent or place on the way?
A. Yes, sir; we passed some tent. The first tent we passed——
Q. Did you know Jacob Jaconi?
A. No, sir; I did not.

Q. Did you know where the fish camp was?
A. I know since I passed it.
Q. Where did you first know where it was located?
A. The first time was the night when we went down to Chena.
Q. How did you learn that it was a fish camp?
A. He was leading the way and told me.
Q. Did you have any conversation about it?
A. Not until we got to the camp and started to leave.
Q. You may state what the defendant did when you came to the camp.
A. He went up—first the dogs began to bark—there seemed to be four or five dogs, I don't know how many. The dogs were rearing and barking around, and he went right up. The dogs did not pay any attention to him; he began to quiet the dogs down, and then I walked up, and they were talking in their own language.
Q. Who was?
A. This man in the tent and Perovich.
Q. Did he come out?
A. No; he staid in there talking.
Q. Was the door closed or open?
A. The door was closed.
Q. You did not understand what was said?
186 Q. Was the door open at all?
A. No. He was kind of standing like this, as if he was going to push it. I hallooed out how far is it to Chena, and he said four miles and a half; it may be more. He said, "Have you fellows got a boat?" and I said, "No, we are walking."
Q. Who inquired?
A. The man in the tent.
Q. Go on. What else was said?
A. Well, he asked if we had a boat, and I said, "No, we are walking." He said by the road it is about four miles. I said, "Come on, Vuko, how did you get out of here; what are you doing over here?" I said, "Do you know that man?" He said, "He speak the same language that I do; he is an Austrian."
Q. What else?
A. He said I have been here several times; I seen him with big roll—he said a thousand—fifteen hundred dollars—making his hands like that [indicating] with big roll of money.
Q. What else did he say?
A. He said he was going to lick that son-of-a-bitch some time. I said, "You going to lick him?" He said, "I will go and lick him with an ax."
Q. Lick him with an ax?
A. Yes; he said, "I will lick him with an ax; I will fix him with an ax." I said, "You won't, either; you are crazy. They will catch you if you do anything like that." I said, "Man, they will catch you if you lick a man with an ax. You would kill him." He said, "I fix him; I take him down and throw him in the water." I said, "You know you can't do anything like that." He said, "The son-of-

a-bitch, I will make fire and burn everything up." He said,
187 "Me a greenhorn just out from the old country. They think a greenhorn won't do anything."

Q. Anything else about this—anything further?

A. I said, "Come on, get out of here; don't talk like that; where is the road?" And he said, "Come, I'll show you;" and he went toward the telegraph line and in a little while we got on the road. And then he started to talk about a road-house man.

Q. What did he say about that?

A. He said he stopped there once.

Q. Anything further?

A. He said he stopped there one night and that he seen some big bills. He talked about he was going there some day or some night; go there to sleep and get up in the night and fix them.

Q. Did you go on further with him—did you go on down to Chena?

A. Yes, sir; we went to Chena. He wanted to camp on the road, but I said no, I am going on to Chena.

Q. What time of the day did you leave here?

A. Nine o'clock in the evening.

Q. About the 20th of October?

A. Yes, sir.

Q. You went over the river and went down that trail?

A. Yes, sir.

Q. How do you get from the trail to the fish camp?

A. You cross the slough and then you turn off this way [indicating].

Q. Before you turned off that trail—in other words, were you on the telephone line?

A. Yes, sir.

Q. How far from the fish camp did you leave the telephone line?

A. Perhaps two hundred yards before you reached the fish tent.

188 Q. Had you ever been at this fish tent before?

A. No; I never saw him; he was inside.

Q. All the conversation you had was through the tent, with the door closed?

A. Yes, sir.

Q. Do you know as a fact whether that was the same building that was burned down afterwards?

A. That is the same place.

Q. Have you been there since?

A. Yes, sir.

That is all.

Cross-examination by Mr. TOZIER:

Q. Did you have any further conversation with Perovich?

A. At that time?

Q. Any conversation?

A. On that trip; yes.

Q. Where were you going?

A. Either to get some longshoring on the boats or pole a boat up the slough.
Q. Had you ever poled a boat up the river?
A. Not this river.
Q. Did you pole a boat up from Chena up to Fairbanks?
A. Only that one time.
Q. Never did before that?
A. No, sir.
Q. About what time was that?
A. We left Chena on the evening of the 21st of October.
Q. Of October?
A. Yes, sir.
189 Q. That was the time you left for Chena?
A. We left the night of the 20th; they were discharging the cargo off the "Margaret."
Q. What time did you get there?
A. At three thirty.
Q. What time did you leave here?
A. Nine o'clock.
Q. How long did you stay at the fish camp?
A. About five minutes.
Q. Mr. Perovich lead the way?
A. Yes, sir.
Q. You followed him?
A. I thought the road was there, and I walked right up.
Q. What time was it when you got there?
A. Pretty near an hour and a half before we reached that place.
Q. What time was it when you reached there that night?
A. About eleven thirty.
Q. Was he awake when you got there?
A. He was awake when I got there.
Q. How long after Perovich went up did you get there?
A. About a minute; as soon as the dogs quit tearing around.
Q. What color dogs were there?
A. I think there was a kind of black and white.
Q. How many did you see?
A. I think four.
Q. You are sure of four?
A. I think there was that many.
Q. Did the man inside of the tent call to the dogs?
A. I heard him call once as I went up.
Q. How far out did the dogs come to meet you?
A. I was down right near the water's edge.
Q. Did they come down on the bank?
190 A. They stood on the bank—looking over the bank.
Q. That is about how far from the cabin?
A. I should say a hundred and fifty feet; I could see the cabin door.
Q. You did not go into the cabin?
A. No, sir.
Q. How far did you stand away?

A. I think about as far as from here to the stove.
Q. Did you see Perovich and the man inside?
A. I saw Perovich with his hand on the door.
Q. With his hand upon the casing of the door?
A. No; on the door, like as if he was going to push it open.
Q. He had the palm of his hand against the door?
A. Up like this [indicating].
Q. How far up?
A. Just about like that [indicating].
Q. Did you hear Perovich say something?
A. I heard some talk in their own language.
Q. Do you understand any Slavonian?
A. No, sir.
Q. You don't know anything about the Slavonian language?
A. I don't know anything about it.
Q. Then you and Perovich went on?
A. I asked him "Where is the road?" and he said "Come on; I'll show you," and he struck out through the brush.
Q. You followed him?
A. Yes, sir.
Q. Were you frightened?
A. Well, after that conversation I was.
Q. That conversation did not take place until after you left?
A. It came right along.
191 Q. Just after you left?
A. Yes, sir.
Q. You were not excited?
A. Not until he commenced that talk.
Q. That made you nervous?
A. It would make anybody nervous.
Q. Did it make you nervous?
A. I can't say that I was frightened.
Q. He wanted you to camp?
A. Yes, sir.
Q. What did he want to camp for?
A. He said "Light a fire and sleep."
Q. Did you have blankets?
A. I had one.
Q. Did he bring any?
A. Yes, sir.
Q. How far was that from Chena?
A. Perhaps a mile below the farmhouse.
Q. He did not make any proposal with you to go to the farmhouse?
A. Yes, sir.
Q. He did?
A. Yes, sir.
Q. That is the one you spoke of when he wanted to build the fire? Was that before you got to the farmhouse?
A. Just before we got to the farmhouse.
Q. Did he talk about it after you passed the farmhouse?
A. No, sir.

Q. Did he talk about it after you got to Chena?
A. No, sir.
Q. Have you ever mentioned it since?
A. No, sir.
Q. Have you ever mentioned it to him since—the matter at
192 the fish camp?
A. No.
Q. Did he ever say anything about it?
A. Nothing about the fish camp.
Q. Nothing about the Hyde ranch matter, either?
A. Not since that.
Q. That is the last conversation you had with Perovich?
A. That is about that.
Q. That is all?
A. That is the last conversation I had.
Q. You had conversations about other things?
A. Yes, sir.
Q. Did you have any conversation with Perovich after returning to Fairbanks?
A. Yes, sir.
Q. What is your name?
A. John Stratton.
Q. Isn't your name Jackson
A. No, sir.
Q. Did you ever live in Seattle?
A. No.
Q. Were you ever in Seattle?
A. I used to work for the Northern Pacific.
Q. Were you ever convicted of any felony?
A. No, sir.
(Objection.)
Q. You never were convicted of a felony in the State of Washington?
A. No, sir.
Q. Were you convicted of a felony anywhere?
A. No, sir.
Q. Where were you born?
193 A. Ohio.
Q. Are you not a half-breed Cherokee Indian?
A. No, sir.
Q. You are sure of that?
A. I am.
Q. Did you ever live in Arizona?
A. Yes, sir.
Q. In Utah?
A. Yes, sir.
Q. Did you work there?
A. I worked a little.
Q. Who did you work for?
A. I have forgotten his name, it was fifteen or sixteen years ago.
Q. Who else did you work for?

A. I worked for the railroad.
Q. What railroad?
A. The branch that comes up from the south.
Q. How long did you work there?
A. A few shifts.
Q. Then where did you go?
A. T , Arizona.
Q. How long were you in T ?
A. Three or four weeks.
Q. What did you do there?
A. Helped as carpenter on a bridge there.
Q. Then where did you go?
A. California.
Q. How long did you stay in California?
A. Pretty near four months.
Q. What part?
194 A. San Juan Valley.
Q. What did you do there?
A. Worked on Hoffman's ranch.
Q. How long did you work there?
A. May be twenty shifts.
Q. How long were you there?
A. Four months in California.
Q. Then where did you go?
A. Frisco.
Q. How long did you stay there?
A. A few weeks.
Q. What did you do in Frisco?
A. Not much of anything.
Q. From Frisco, where did you go?
A. From Frisco to Sacramento.
Q. What did you do there?
A. Staid there a little while and then went down the valley and worked for another rancher.
Q. What was his name?
A. Hickman.
Q. How long did you work for him?
A. About a month.
Q. Where did you go then?
A. To Sacramento. I heard that Seattle was burned down——
Q. Did you go to Seattle?
A. I started for Seattle but stopped in Tacoma.
Q. How long did you stay there?
A. Staid there fifteen or sixteen years.
Q. What did you do there?
A. I worked on the court-house and city hall. John Long had a contract there.
Q. Did you know Edgar Wickersham there?
195 A. Not there.
Q. Did you know him here?
A. Yes, sir.

Q. Did you ever have any conversation with Edgar Wickersham here about this case?
A. Well, yes.
Q. That was in relation to Perovich?
A. Yes, sir; I did.
Q. Well, you stopped in Tacoma how long?
A. I staid in Tacoma until 1902 and then I left there; of course I have been up in the mountains and came back.
Q. What did you do in the mountains?
A. Worked in the smelter at Anaconda.
Q. How long?
A. I was there one winter.
Q. What winter?
A. The winter of 1895.
Q. Where did you go then?
A. I heard of a new strike over at Quigley. I worked in the smelter—the upper works.
Q. What works?
A. The Anaconda smelter; I worked in the upper works.
Q. Then you went to Quigley?
A. Yes, sir.
Q. How long did you stay?
A. I went to Tacoma in the spring.
Q. How long did you stay there?
A. Until I came to Douglas Island.
Q. When was that?
A. In 1902.
Q. Do you know many people in Tacoma?
A. I know lots of people there.
196 Q. You came there fifteen years ago?
A. Yes, sir.
Q. Did you ever know the judge of this court?
A. I did not know him; I heard of him and I may have seen him.
Q. Do you know John Whitehead?
A. I am not sure.
Q. Mr. Regan?
(Objection.)
COURT. Go ahead, gentlemen.
Q. What did you do at Douglas Island?
A. Worked in the Treadwell mine.
Q. How long were you there?
A. Two years.
Q. Part of the time you did not work?
A. I worked every day I was there—every one.
Q. Steadily for two years?
A. Maybe I lost a shift or two.
Q. Then where did you go?
A. I came in here.
Q. How long have you been here?
A. Since about the 6th of last September.
Q. What have you been doing here?

A. Around on the creeks and prospecting; working here and there.
Q. Do you know a man by the name of Claud Kelley?
A. Yes, sir.
Q. Do you know where he lives?
A. Yes, sir.
Q. Have you ever been at his house?
A. Yes, sir.
Q. When?
A. I stopped there when I came here first; I stopped with him ten days.
197 A. Puttering around, putting up a cabin there. I was helping him fix a cabin.
Q. Were you working for wages?
A. I was not exactly; I helped them and they gave me a few dollars. They were friends of mine.
Q. Did you know Charley on Douglas Island?
A. No.
Q. Did you know Claude on Douglas Island?
A. No.
Q. Did you work in his house?
A. No.
Q. Were you ever in his house?
A. I was in there once.
Q. You were never in there again?
A. No, sir.
Q. You are sure of that?
A. Yes, sir; I am sure of that.
Q. Was you working for him about the time his house was robbed?
Mr. HARLAN. I object to this; it is not fair to the witness.
COURT. Counsel will be instructed that the questions must be fair.
Mr. HARLAN. I think it is incompetent and should not go before the jury.
COURT. Counsel will stick to the rule as close as possible.
Q. Do you know Perovich very well?
A. I have talked with him.
Mr. HARLAN. If he leaves that subject now, I will ask to have it stricken out.
COURT. The court will feel inclined to do that.
198 Mr. TOZIER. I may get back to that a little later.
Q. You saw him several times in Fairbanks?
A. Yes, sir.
Q. Pretty friendly with him?
A. I used to talk to him.
Q. Did you ever have any business dealings with him?
A. No.
Q. Did he ever have any with you?
A. We had several conversations since I was here—that is all.
Q. Do you know any of his countrymen here?
A. Some of them.
Q. Do you know Peter Jelich?

A. Yes, sir.
Q. Peter Vidovich?
A. I know him slightly.
Q. Do you know Mark Scorlich?
A. If he came up so I could see him, I might; so many of those names are alike; I might know his face; I don't remember all these names.
Q. When did you first repeat this conversation?
A. First repeat it?
Q. Yes, sir.
A. I repeated it to Mr. Hess.
Q. When?
A. When Vidovich asked me to come here.
Q. Who did you first mention it to?
A. I mentioned it to Hess.
Q. Did you mention it to Vidovich?
A. I mentioned something about it down at Chena.
Q. To Vidovich?
A. About going down with him.
Q. Who spoke first, you or Vidovich?
199 A. Vidovich.
Q. Did Vidovich know you before?
A. He saw me here two or three times before I went down the river.
Q. Did you have a conversation, say, with Vidovich at that about Perovich?
A. No.
Q. Did you have a conversation with anybody else about Perovich?
A. I saw Anton Balish at Golden City.
Q. Did you ever have a talk with Anton about Perovich, about Golden City; anything you were going to do out there?
A. Not at Golden City.
Q. Did you ever have a talk with Clifford Welsh about Perovich?
A. Yes; we went down the river.
Q. What did you go down the river for?
A. He went down to find Perovich and bring him back.
Q. Did you repeat that conversation to him?
A. We had a talk. What conversation do you mean?
Q. The conversation you had with Perovich near Jaconi's cabin.
A. I did not mention that to Welsh.
Q. What business was Welsh engaged in?
A. He said he was on the secret service.
Q. You did not mention much about this to him?
A. He did not ask me.
Q. Were your suspicions aroused when the cabin was burned as to the guilt or innocence of the defendant?
A. I thought of what Perovich had said.
Q. Did you go and tell Welsh?
A. No.
Q. Did you tell any officer of the law?

A. No.

200 Q. Did you tell any officer of the law about that conversation after you learned that the fish camp had been burned?

A. I did not tell any officer of the law, because no officer of the law said anything about it to me.

Q. You had a conversation with Welsh, did you not?

A. Yes, sir.

Q. You knew that he was a detective?

A. Yes, sir.

Q. Your talked showed that he was?

A. Yes; he said he was a detective.

Q. You knew nothing to the contrary. Why did you go with him?

A. He said come and go along; that he did not exactly know him.

Q. He took you along to identify him?

A. Yes, sir.

Q. How far did you go with Welsh?

A. About eleven miles below Chena.

Q. Did you stop there?

A. Yes, sir.

Q. Did you come back with him?

A. Yes, sir.

Q. Where did you return to?

A. To Fairbanks.

Q. Did you talk with Welsh?

A. Between here and Chena?

Q. Yes.

A. I never talked to Welsh about it.

Q. Did you know Mr. Dreibelbis, the deputy marshal?

A. I did not at that time.

Q. You knew where his place of business was?

A. I suppose I could have found him.

Q. You never reported to Mr. Dreibelbis?

201 A. No; I never reported anything to him about it.

Q. You never told him?

A. I told Walsh.

Q. You did not tell him anything about it?

A. I did not think it was my duty. I thought if the prosecuting attorney wanted it he would ask for it.

Q. Did you tell Mr. Hess?

A. No, sir; I thought when he wanted it he would ask.

Q. Did you tell Mr. Hess at all?

A. Afterwards.

Q. How did you come to go down the river with Welsh?

A. I met him down at Chena, and he insisted on me going down with him.

Q. Were you acquainted with him at all?

A. No; I talk to him when I see him.

Q. Was there not some other reason why you went?

A. No, sir.

Q. That is true, is it, Mr. Stratton?

A. Yes, sir.
Q. You were not promised any money or reward?
A. Mr. Anton said, If you can go and get any trace of him I will make it all right with you.
Q. Who is Anton?
A. He runs a little store, and he told me this man was his friend.
Q. That was the only reason you did go?
A. I thought I would go by the farmhouse and notify them.
Q. Did you leave that morning?
A. I mean when I left this town.
Q. That was when?
A. That was the next day; the day after this occurred.
202 Q. That was the day you talked with Welsh?
A. Yes, sir.
Q. You wanted to go and notify the people at the farmhouse?
A. Yes, sir.
Q. What notice did you give them?
A. I went and rapped on the door, and I asked if Mr. Hyde was there. A lady came to the door——
Q. What then?
A. She said she was Mrs. Hyde.
Q. What did you tell her?
A. I asked her if she remember such and such a fellow stopping there and she said, after a few seconds, she said yes. Then I went on to warn her; to tell her and she said then my husband was here that night. I did not like the looks of the fellow.
Q. After you talked with Perovich you never sent any warning to Jaconi?
A. No; I did not warn him.
Q. Make any inquiries who he was?
A. I did not make any inquiries.
Q. You did not make any atempt to find out who he was?
A. I thought he was protected anyway.
Q. You thought he was protected?
A. The way that fellow talked; that he would make others suspicious of him. I never had an opportunity to go down past there. It was bad policy to go there anyway.
Q. You did not tell anything to the marshal about that?
A. He never said anything. I could not say when he was going to do it.
Q. How long did you stay in Seattle?
A. I have been in Seattle several times for a day; sometimes a week or ten days.
203 Q. You never stopped there any great length of time?
A. No, sir.
Q. Were you ever in the town of Wheeling?
A. I never was.
Q. You don't know where it is?
A. I have heard of it.
Q. Were you ever in Spokane?
A. Yes, sir.

Q. How long were you in Spokane?
A. Six weeks at one time.
Q. Now, Mr. Stratton, if a person who knew you in Seattle would be willing to go on the stand and——
Mr. HARLAN. We object to that.
COURT. I think that ought to be excluded. Objection sustained.
Q. You say you don't know anything about the Slavonian language at all?
A. No, sir.
Q. Do you know one word?
A. I don't think I do.
Q. Were you working with Slavonians quite a little?
A. Yes. My partners most always spoke English. I heard the Slavonians talk a good deal.
Q. You never learned the language at all?
A. No; I never did.
Q. How long did you know Mr. Perovich?
A. I knew his brother. His brother is a pretty nice man.
Q. You never knew anything about whether this man was a pretty nice man or not?
A. Well——
Q. You never knew anything against this fellow being a pretty nice boy?
204 A. He was locked up there twenty-four hours once.
Q. That was for fighting?
A. Yes, sir.
Q. He had a little trouble?
A. He was fighting.
Q. They usually turned the hose on the crowd when they got to fighting?
A. They sometimes turned the water on the crowd to make them stop.
Q. Didn't they turn the hose on them?
A. Yes.
Q. Locked up quite a number of them?
A. Yes, sir.
Q. You were not in the crowd?
A. I was looking on.
Q. Did you get wet?
A. I did not get close enough.
Q. You say you knew Perovich's brother?
A. Yes, sir.
Q. Which one?
A. Zeko.
Q. What did he do?
A. He was running a machine.
Q. What point did you stop at with Welsh below Chena?
A. At a wood camp—a fish camp.
Q. Do you remember what date that was?
A. The first part of November; I don't remember the date.
Q. Had you been out to Golden before you went down with Welsh?

A. No.

Q. Where did you see Anton, the storekeeper?

A. Right here in this town; he came to town.

205 Q. Did you talk with Vidovich before you went down there?

A. I do not remember of having a conversation with Vidovich.

Q. Did you have any conversation with Jelich before you went down there with Welsh?

A. Yes, sir; he was the first man to come and ask where this young fellow was.

Q. He knew that you knew him?

A. He saw me talking to him.

That is all.

Redirect examination by Mr. HARLAN:

Q. What was the object of you and this defendant going down to Chena?

A. We thought we could get some work to do on the "Margaret."

Q. Did you pole a boat up?

A. Yes, sir.

Q. Where did you see him after that?

A. This man?

Q. This defendant.

A. He came in the boat a little ways. He got out. He could not pole, and me and another fellow put him ashore.

Q. Who was the other fellow?

A. He was a young English fellow; he poled with me.

Q. You got in with him at Chena?

A. Yes, sir.

Q. Did you see the defendant at any time after he got out of the boat?

A. He was walking along on the shore, kind of keeping along with our boat until it got dark, and we left him behind. He built a fire behind us.

206 Q. Did you see him after that?

A. I did not see him until the next morning. He came out on the same side a little above the boat.

Q. Did you come on that side as you came up, before you got here?

A. Yes, sir; we came on the other side of the river.

Q. Did you see him after that day?

A. Yes, sir; we worked the boat on up until we got on the other side and then he caught up with us.

Q. The next day, I mean?

A. The next day we were still coming up with the boat.

Q. When did you arrive here?

A. We did not arrive here; we got hung up with the ice.

Q. How late did you see him, say on the 22d?

A. He was with us on the 22d.

Q. Did you see him that night?

A. We were all camped on this side again on the 23d.

Q. He was still with you?

A. He came down and laid by the fire.
Q. Did you see him after that?
A. He left that morning and came up to town. I staid there to watch the boat, and then the pack train came down and packed the stuff up.
Q. Did you see him again at any time after that, before the tent was burned?
A. Yes, sir; he came down there and there were two or three boxes there and he helped pack them up and then he asked the fellow to pay him off; and he had a dispute with the fellow that had the bill of the goods.
Q. That was about the 24th?
A. It might have been the 24th.
Q. After that was settled up, did you see him any more?
207 A. Yes, he was there.
Q. How late did you see him prior to the 29th of October?
A. On the 28th.
Q. Where did you see him?
A. He was talking with me in the Lacey saloon, I think.
Q. What time of the day?
A. I should judge about seven o'clock in the evening.
Q. Where did you leave him or did he leave you?
A. He left me there.
Q. Do you know where he went?
A. He said he was going to some of his countryman's cabin; he was going to see if he could find anything in it.
Q. Did you see him after that?
A. No, sir; I never seen him after that.
Q. You had a conversation, you say, with Mr. Hess about this matter about the time you heard of this other affair; did you tell Mr. Hess about that?
A. Yes, sir.
Q. Mr. Hess was assistant district attorney?
A. That is what I understand.
Q. When did Welsh first mention this matter to you?
A. The first time I was down to Chena; he never asked me anything about it up here.
Q. Was that the same day that you started down the river with him?
A. Yes, sir; that was in the evening; I met him in the evening.
Q. How long were you with him?
A. With Welsh?
Q. Yes.
A. We started one night—that following day—and then we came back and he said he had to see Vidovich about something.
208 Q. I will ask you whether it is a fact that Welsh tried to induce you to go away from here?
A. Yes, sir.
Q. When was that?
A. Along after that occurred.
Q. What did he say?

A. He tried to drive me out; told me that I had better get out, or something; he tried to scare me out.

Q. What did he say?

A. He said that he heard that I had something to do with Perovich and that they were liable to prosecute me and throw me in jail; something like that.

Q. Anything said about your expenses being paid?

A. He did not exactly say; he said he would show me where and how, supposing I would insist on going right away.

Q. Did he say that?

A. He said he would get me a couple of dogs, and I should let him know.

Q. When was that?

A. After the man was captured.

Q. Where was it?

A. In the Sideboard Saloon.

That is all.

Recross-examination by Mr. TOZIER:

Q. You and Welsh were pretty friendly?

A. Yes; going down the river.

Q. You were friendly afterwards?

A. We talked together.

209 Q. Did he offer you any money?

A. No, sir.

Q. What did he offer you?

A. He told me he could get some dogs.

Q. And for you to leave the country?

A. That I had better mush outside. I suppose that is what he meant.

Q. You say he meant something?

A. That is what he said; that he understood that they might prosecute me.

Q. What did you tell him?

A. I told him I did not know anything; I knew something about some cabins; I did not let on how much. I thought he knew enough; he thought he knew enough, anyway.

Q. Did you think he knew anything about it?

A. He did not know that I knew, and he didn't know what I knew.

Q. That did not have any effect on you at all?

A. None at all.

Q. At the time you were poling up the boat did he help you pack some boxes?

A. He helped three or four of us pack up the boxes; he packed one box; we had a box apiece.

Q. Why did he do that?

A. He was working.

Q. Did he get paid?

A. I don't think the man settled with him.

Q. How many of you were working on that boat?

A. Three of us supposed to be.

Q. Who were they?
A. Perovich was one, and I was one, and I don't know the other fellow's name; he was a young Englishman. I think he is on
210 Fairbanks working.

Mr. TOZIER. If the court please, I ask that this man be arrested for burglary before he leaves the stand.

M. HARLAN. If the court please, I think Mr. Tozier ought to be fined for contempt of court. He know better than to make a statement of that kind here before the jury.

COURT. The court will not hear any more about it. The witness may stand aside. Call your next witness.

PETER VIDOVICH recalled to act as interpreter.

JOHN HAIDUKOVICH, a witness called on behalf of the prosecution, being first duly sworn, testified through the interpreter as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Fairbanks Creek.
Q. How long have you been on Fairbanks Creek?
A. Since a month—fifteen or sixteen days.
Q. How long have you been in the Fairbanks country?
A. From the first of October, 1904.
Q. Where did you live prior to coming to this country?
A. From Dawson here.
Q. How long did you live in Dawson?
A. He lived in Dawson from the 15th of July to September, 1904.
Q. Do you know Vuko Perovich, the defendant?
A. Yes, sir; he know.
Q. Did you know him before you came to Dawson?
A. He knows him before.
211 Q. Where did you know him before that?
A. Douglas Island.
Q. Did you and Vuko Perovich own a certain watch chain in Dawson? Where did you get that watch chain?
A. Have made out of nuggets in Dawson.
Q. Who furnished the nuggets to have it made?
A. He himself had one ounce and half nuggets.
Q. Did Vuko Perovich have some of the nuggets?
A. Perovich had more that he did.
Q. After this chain was made who took possession of it?
A. He says we make chain.
Q. Who?
A. Witness.
Q. Did Vuko Perovich have this watch chain?
A. Same nugget chain, he says, that the witness and Perovich have made of nuggets.
Q. Did Vuko Perovich have this chain in his possession?
A. Never did.
Q. Who has had possession of it ever since it was made?
A. All time the witness has had possession of watch chain.

Q. Would you know that chain if you were to see it now?

A. He says yes.

Q. I will now hand you identification No. 21 and ask if this is the chain you and Vuko Perovich had made in Dawson?

A. The same chain.

Q. How do you know?

A. He says he know this chain as his own property—also on account of this largest nugget.

Q. Does Vuko Perovich own any interest in that chain to-day?

A. No.

212 Q. When did he sell his interest to you, if he sold it?

A. He sell to him his interest when he was working for Archie Burns, cutting wood.

Q. Do you remember what month that was in?

A. He can't remember; he sell his interest in chain when he live there; he can't remember the date.

Q. Ask if he can tell what he, Perovich, sold his interest to him, Haidukovich?

A. Yes, sir.

Q. How much did you pay him, Perovich, for it when you bought it—the watch chain?

A. Fifteen dollars.

Q. Did you deliver this watch chain to the officers?

A. He did when the chief of police asked him to surrender it.

Q. Up to the time you delivered this chain to the officer had it ever left your possession from the time it was made?

A. All time it was in his possession until he surrender it to the chief of police.

Q. You were quite intimate—that is, good friends—with Perovich when you lived in Dawson, were you?

A. He says in good standing, just as with any of his countrymen.

Q. You knew him well in Fairbanks, did you?

A. He says Perovich very often come to see him in cabin where he worked.

Q. Did you ever know or hear of Vuko Perovich owning any interest in any chain except his interest in this nugget chain?

A. After they made the chain he, Perovich, did have from sixty to eighty dollars nuggets to make a chain up from it.

Q. Those were the nuggets that went into this chain?

A. Perovich did put an ounce-and-half nugget in that chain, same as witness, and that Perovich he say he have sixty or

213 eighty dollars in gold nugget to make another chain.

That is all.

COURT. Mr. Tozier, do you prefer to let the cross-examination go until after the noon hour?

Mr. TOZIER. I would much prefer it.

Mr. HARLAN. We may desire to ask a few further questions on direct examination too.

COURT. Gentlemen of the jury, when court takes a recess it will be until 1.30. You will remain in charge of the marshal, and you will remember the admonition heretofore given to you by the court not

to talk to anyone nor permit anyone to talk to you about this case. The marshal will take charge of the jury, and court will take a recess until 1.30 p. m.

214 Court convened pursuant to adjournment at 1.30 p. m., and all parties being present as heretofore the following proceedings were had:

JOHN HAIDUKOVICH, being recalled for further examination, testified as follows:

Cross-examination by Mr. TOZIER:

Q. When did you come to Fairbanks?
A. In September; he leave and the same month arrive here.
Q. What year?
A. 1904.
Q. What boat did he come on?
A. He says "John Cudahey;" he hardly recall if that is correct.
Q. Was Perovich on that boat?
A. Yes, sir.
Q. Did you talk with Perovich on the way from Dawson to Fairbanks?
A. Yes, sir.
Q. Do you know if Perovich had in his possession any gold nuggets at that time?
A. He did not tell him.
Q. Where were you and Perovich when you had the chain made?
A. At Dawson.
Q. What jeweler made the chain?
A. He can't remember.
Q. Do you remember what kind of a looking man the jeweler was?
A. Little, small man, with brown mustache.
Q. Is he a large man or a small man?
A. Small man.
Q. Did the jeweler speak your native tongue?
A. No.

215 Q. Do you speak any language besides the Slavonian language and English language?

A. He says he knows some of the Greek and some of the Turkish language, which he no use in this country.
Q. Can you speak the French language?
A. No.
Q. When did you last have the chain in your possession?
A. He had it last in Fairbanks, when he give it away.
Q. Who did you give the chain to?
A. He says he gave the chain to chief of police, Wickersham, and that I was present.
Mr. HARLAN. Who was present?
INTERPRETER. Me.
Q. Does that chain now belong to you?
A. He says it belongs to him; he has returned the money which was given him for security for the chain.
That is all.

H. Ross, a witness produced on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination by Mr. COHN:

Q. How long have you been in Alaska?
A. About three years.
Q. Were you formerly in business here in Fairbanks?
A. Yes, sir.
Q. What business?
A. General merchandise.
Q. How long and during what period of time were you in business?
A. I came in here a year ago.
216 Q. When did you quit business, if at all?
A. About a month ago.
Q. Where was your place of business?
A. In the Hamilton building.
Q. Did you know Jacob Jaconi, a fisherman who lived down the river here?
A. I did not know him personally; I was acquainted with him.
Q. Did you know him when you saw him?
A. Yes, sir.
Q. Do you know Peter Vidovich, a tall man that was just in here and went out?
A. I saw him; yes, I know him.
Q. Mr. Ross, I am going to hand you two articles of clothing which have been marked number three and four, the coat being a corduroy coat and marked number three and the vest number four; I will ask you if you remember seeing these two pieces of clothing before?
A. I saw them and sold them.
Q. Who did you sell them to?
A. To that man who was supposed to be killed.
Q. Jacob Jaconi?
A. Yes, sir.
Q. Is there any means by which you can tell this coat and vest?
A. I am sure that is the coat I sold. The coat was a little too small here under the arms, and we went to a tailor, and, if you examine this here, you can see that it is let out right here; it is lighter right here.
Q. Point out to the jury where it is lighter.
A. Right under the arms; right here [indicating]. It is here also.
217 Q. Aside from that mark can you positively identify that coat—the maker of it, the material, or anything?
A. Well, this is the coat that I sold to Jaconi for the simple reason because at that time of the year in this town of Fairbanks there was not another coat of a similar kind to this.
Q. When was it that you sold this coat and vest to him?
A. Well, all that I could say—I can't say.
Q. During what month—about when?
A. I only know that when this case occurred it was only about eight or ten days after he bought these goods.

Q. Then—he was supposed to have been killed in October—it must have been during the month of October that he bought them?
A. Yes, sir; something like that.
Q. I will show you some pieces of underclothing which are marked for identification number six, number seven, number eight, and number nine. Did you handle that class of underwear in your store?
A. Yes, sir.
Q. Did you sell any of it?
A. Yes, sir.
Q. Did you sell any to Jacob Jaconi?
A. He bought the coat and vest, and then he came and bought this underwear.
Q. Do you remember how much he bought of you?
A. I can't say; as a rule they generally buy two suits. I can't say whether he bought more or not.
Q. Do you know anything about the sizes?
A. This underwear runs generally in big sizes.
218 Q. About what sizes?
A. Forty and forty-two; I remember them ran in big sizes.
Mr. COHN. We offer in evidence exhibits marked for identification Nos. 9, 8, 7, and 6.
COURT. No objection. They may be admitted.
Mr. COHN. We offer the coat and vest marked for identification Nos. 3 and 4.
COURT. No objection. They may be admitted.
That is all.

Cross-examination by Mr. TOZIER:

Q. Did you have the work performed in your store?
A. No, sir.
Q. Did you pay for it?
A. No, sir.
Q. Was the coat and vest after you sold it to Jaconi in your possession?
A. No, sir.
Q. Did you see that coat and vest after you sold it to Jaconi before it was brought back for the purpose of identification?
A. No, sir.
Q. How many of those corduroy suits did you have in stock?
A. I had only two.
Q. To whom did you sell the other?
A. The other has not been sold.
Q. Did you know Jaconi?
A. I knew him, as I said, simply when he came into buy a little goods off and on.
Q. Did you know him by name?
A. At that time, I did not.
219 Q. When did you know him by name?
A. When I read the account in the paper.
Q. How much of that class of underwear did you have in stock, Mr. Ross?
A. I had about five dozen.

Q. Five dozen shirts and five dozen drawers?
A. Yes, sir.
That is all.

220 MARK SCORLICH, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination, Mr. HARLAN:

Q. You testified before, Mr. Scorlich. There is a question I did not ask you with regard to the conversation you had with Perovich some time here or below here. Did you have a conversation sometime before the burning of this tent in which he talked with you about staying all night with Jaconi?

A. That took place in the Fairbanks saloon. He came to me; I was sitting up playing black-jack, and he comes in and says "I was down to see your partner." I was freighting on the river with Kid Shady, poleing a boat, and as we came by it was too late to go any further and we asked to stay all night. He told us we could and he took us right in and we slept on his robe and we had supper, and in the morning I did not have any money to pay him, and I asked him what was the price. He said, "Man I don't want any money." I was anxious to pay and I took some sugar and baking powder and other articles that I was freighting. He asked me who owned the stuff. "Well," I said, "you take it," but Jaconi did not want it and he paid me some money. He did not want it for staying over night and he paid me for the stuff I brought up to him; some sugar and baking powder.

Q. Did Jaconi buy some oil?
A. Yes, sir.
Q. How much of it did he buy?
A. Six half-gallon cans.
Q. What kind of oil?
A. Olive oil.

Q. Do you know what he did with it?
221 A. He took it down to his cabin.
Q. Did he say that Jaconi paid him?

A. Yes, sir; and also that Jaconi had lots of nice things. In the same conversation he said he love nice things, jewelry and lots of money. That is what he told me.

Q. When did he say he got the baking powder and sugar?
A. That morning before they came away—after getting breakfast.
Q. Where did he get it?
A. From the people he was freighting for.
Q. Got it out of the boat?
A. Yes; from the people he was freighting for.

Q. When you went back to the tent the day you found that the tent was burned down, state whether or not there was any stove wood in sight.
A. No, sir.
Q. Are you familiar with the place where the wood lay?
A. Yes, sir.
Q. Was there any indications of ashes where the wood was?

A. No, sir; no place but where the tent was.

Q. You were there with Jaconi a great deal of the time, were you acquainted with the kind of clothes he had?

A. Yes, sir.

Q. What do you say as to this, identification No. 13; did you ever see that there?

A. I have.

Q. Whose was that?

A. That was the sweater he wore when we were fishing.

Mr. HARLAN. I offer Exhibit No. 13 in evidence.

COURT. No objection. It may be received and admitted.

Q. I now hand you identification No. 11 and identification No. 10. State whether or not you recognize these garments.

A. I could not swear to it, but he had some exactly like them.

222 Mr. HARLAN. I offer identifications Nos. 10 and 11 as exhibits.

COURT. They may be admitted.

Q. I hand you No. 23. Do you know whether or not Jaconi in his lifetime had an overcoat?

A. Yes, sir.

Q. What do you say as to this which I now hand you?

A. This is the overcoat. The way I know, it was hanging on the wall; it was up high, and I could not reach it, and I pulled this down and broke this off. It is the same one.

Q. What would you say as to this being the coat?

A. This is the coat.

Mr. HARLAN. I offer identification No. 23 as an exhibit.

COURT. If there is no objection it may be admitted.

Q. Did he have such a shirt as this? [Identification No. 1.]

A. Yes, sir; he wore that shirt a long time.

Q. In your opinion I will ask you if that is the shirt which he had there?

A. Yes, sir.

Mr. HARLAN. I offer identification No. 1 in evidence.

COURT. It may be admitted.

Q. Examine identification No. 2 and state whether or not you have seen that before.

A. Yes, sir; I seen this cap for a long time; this is Jaconi's cap.

Mr. HARLAN. I offer identification No. 2 in evidence.

COURT. It may be admitted.

Q. I now hand you identification No. 12. You may state whether or not you have seen this before.

A. I never saw that before.

223 Q. These gloves, marked identification No. 16; state whether or not you recognize these gloves.

A. Yes, sir; those are the gloves that I saw there. I used one of them myself to saw wood, the right one.

Q. Whose gloves were they?

A. Jaconi's.

Mr. HARLAN. I offer identification No. 16 in evidence.

COURT. They may be admitted.

Q. You used one when you was there?

A. Yes, sir; I used the right-hand one.

Q. While you were at his cabin?

A. Yes, sir; whenever I would saw wood or feed the dogs I had one on.

Q. Do you know anything about this shirt?

A. I saw this shirt; I could not swear to it.

Q. Anything about his having overalls?

A. He used overalls, but I have no way of telling them.

Q. You could not identify these?

A. No, sir.

Q. Do you know anything about his having smoking tobacco?

A. He smoked Durham all his life.

Q. Did you see any about his place?

A. I did.

Q. You could not say whether or not these are the packages (25)?

A. That is the kind he used; he used Durham all his life.

Q. Do you know anything about Jaconi having anything of this kind there?

A. Yes, he had some there. He made a tarpaulin, and he had some over. He used part.

Q. Do you know anything about the quantity he had on hand?

A. He had bought it when he came to town.

Mr. HARLAN. I offer this in evidence.

224 Mr. TOZIER. We object on the ground that it has not been identified.

COURT. I think the objection should be sustained.

Mr. HARLAN. I offer in evidence identification No. 26.

Mr. TOZIER. We object on the same ground.

COURT. The objection is sustained.

Q. Did you know of Jaconi having a razor?

A. He had a black-handled, hollow-ground razor.

Q. What kind?

A. A hollow-ground razor.

Q. Do you know the name of the maker?

A. No.

Q. You don't know what the maker's name is?

A. All I can tell is by the shape and size of it. I have no particular mark on the razor. I could not swear that this is the one. it is a hollow-ground and black-handled, the same as this.

Q. The same kind as this?

A. Yes, sir; just the same.

Q. How long did you see it and how frequently?

A. I shaved with it.

Q. I will ask you if, in your opinion, you think it is the same?

A. In my opinion it is. It is hard to swear to without knowing the make.

Mr. HARLAN. We offer this in evidence, No. 27.

Mr. TOZIER. We object on the ground that it has not been identified.

COURT. It is of the same character in his opinion. I think it is competent. The objection may be overruled.

Q. Are there any of these articles which you recognize?

A. Jaconi had a pair of silk gloves that he bought in the
225 N. C. store in Dawson. When I went hunting I used this one.

Q. Examine these and see if you think these are the gloves.

A. I think these are the gloves that Jaconi bought in the N. C. in Dawson.

Q. How long have you seen them?

A. I seen them when I was there.

Q. What do you say as to these being the gloves?

A. Yes, sir; I think they are the same.

Mr. HARLAN. I offer No. 28 in evidence.

COURT. If there is no objection, they may be admitted.

Q. State whether or not you are acquainted with the kind of neckties Jaconi had.

Mr. TOZIER. If the court please, I shall have to ask counsel not to exhibit the article to the witness before he answers the question.

COURT. It is all before the jury, and they will understand how it is done.

Mr. TOZIER. I note an exception.

Q. Now, you may take this and examine and state whether you have ever seen any of these before; that is, prior to the death of Jaconi.

A. This blue one; there is no mark on it. I saw that, but the others I could not say anything about.

Q. You don't remember whether he had anything like that or not?

A. I saw him wear it in Dawson. He did not wear it here; he never dressed up here.

Q. You never saw him wear it here?

A. He was working all the time.

Mr. HARLAN. I offer identification No. 29 in evidence.

COURT. No objection. It may be admitted.

226 Q. Do you know anything about these other articles?

A. I think the suspenders—he had what Peter Vidovich gave him as a present.

Q. Do you say they were such suspenders as these?

A. Exactly.

Q. When did you see them?

A. They were hanging there when I was there.

Q. What do you say as to these being the same ones?

A. He had this pair.

Q. What do you think about them being the same?

A. Yes, sir; I think they are the same.

Mr. HARLAN. I offer No. 30 in evidence.

COURT. No objection. They may be admitted.

Q. Any other articles there that you recognize? I hand you identification No. 14.

A. Yes, sir; I know this, and I know where he got it. This was also given to him by Peter Vidovich.

Mr. HARLAN. I offer No. 14 in evidence.

COURT. No objection. It may be admitted.

Q. Any of these articles that you recognize as having seen before?

A. No, sir; except the writing paper. I think that is the paper I left when I was working there.

Q. Examine the paper.

A. This is the same kind of paper that I left there.

Q. Take the rubber band off and examine it and satisfy yourself.

A. It is the kind that I had there. This is it.

Q. When did you leave it there?

A. When I left there I did not take it with me.

Q. You left there about the 20th of October?

A. Yes, sir.

227 Mr. HARLAN. I offer No. 31 in evidence.

COURT. No objection; it may be admitted.

Q. Do you see anything else there?

A. The white silk handkerchief, but there might be a thousand like that.

Q. You could not identify the handkerchiefs?

A. No, sir.

Q. Do you know anything about these other things?

A. No; that corkscrew I know.

Q. Did he have a corkscrew similar to that?

A. Yes, sir.

Q. Where did he have that?

A. He had that on a little shelf in his cabin.

Mr. HARLAN. I offer No. 32 in evidence.

COURT. No objection. It may be admitted.

Q. Did you say he had a comb or more than one?

A. I don't remember; when he went down he took his comb. I remember a little short aluminum comb. He might have had another, but I don't remember about that.

Q. Did he have a clothes bag?

A. Yes, sir; he had a canvas clothes bag.

Q. What they call a war bag?

A. Yes, sir.

Q. Any mark about the back that you could recognize it by from another bag of the same kind?

A. He had two or three; he had one to put his floats in; he had one with his nets in, and he had one for his clothes.

Q. I will hand you identification No. 5. Does this have the same appearance as they did?

A. Yes, sir.

Q. You have no mark?

A. No.

228 Q. What would you say as to this being one of them?

A. This is one. It is whiter than a common one.

Mr. HARLAN. I offer No. 5 in evidence.

COURT. No objection. It may be admitted.

Q. This tent of Jaconi's that we have been talking about here—where is it situated; where was it?

A. It was on the river bank about fifty yards from the slough.

Q. How far from here?
A. I should judge three miles; it took me fifteen minutes, as fast as I could walk, to come up here.
Q. In what country is it located?
A. Right on the timber line.
Q. In what country—Alaska?
A. Yes, sir.
Q. District of Alaska?
A. Yes, sir.
Q. Do you know whether or not Jaconi had a watch in his lifetime?
A. Yes, sir; he had a gold watch.
Q. Do you know where he got it?
A. He told me he bought it in Austria.
Q. You were not with him when he got it?
A. No, sir.
Q. Did you frequently see it?
A. Yes, sir.
Q. When was the last time you saw it?
A. The day he came up; he took it off when he came in; he took it off and hung it on the wall.
Q. Came up from where?
A. Torotich's camp.
Q. About what date?
A. The 20th or 21st.
Q. Did he have any mark on the watch?
229 A. Well, the watch was good size; kind of square watch with a big stem on it. I think it is bigger than most watches. He had it on a fish string with a kind of knot—three fish string strings tied together with a kind of knot. His initials in gold on the case.
Q. What were his initials?
A. J. J.
Q. I will ask you to examine identification No. 18 and state whether or not you have ever seen that before.
A. That is the watch.
Q. Who owned that watch?
A. Jaconi.
Q. This is the watch you saw on his wall on the 20th of October, in his cabin?
A. Yes, sir; that is the watch and that is the string.
Mr. HARLAN. I offer No. 18 in evidence.
COURT. No objection. It may be admitted.
Q. I will ask you if you know anything about this key?
A. It is his tent key. I had one somewhere on my string and he used the other.
Q. Do you know anything about his having a gold money poke?
A. He had two. He had a poke with a round bottom and then he had another poke that I don't think he had anything in at all.
Q. Examine this identification No. 19 and state whether or not you have seen it before.

A. This is the poke and this is the show string that he sewed on himself.

Q. Did you see him?

A. Yes; two years ago.

Mr. HARLAN. I offer No. 19 in evidence.

230 COURT. No objection. It may be admitted.

Q. Do you know anything about his having a pocketknife?

A. He had a large one.

Q. Examine No. 20 and see if you ever saw it or something similar to it.

A. Yes; that is the one; this blade he had sharp as a razor which he used for fixing his nets. He got it when we came back from Dawson. He got it from Vidovich one time.

Q. When was he in Dawson?

A. He came back July first.

Q. A year ago last July?

A. Two years ago.

Q. What do you say as to whether or not, in your opinion, that is the knife?

A. That is the knife.

Mr. HARLAN. I offer No. 20 in evidence.

COURT. No objection. It may be admitted.

That is all.

Cross-examination by Mr. TOZIER:

Q. Where did you say Peter Vidovich gave it to him?

A. In Dawson.

Q. What kind of a lock was the lock on Jaconi's cabin?

A. It was a small padlock; a square lock.

Q. Was that it that was there a moment ago?

A. I did not see that.

Q. You saw it lying there?

A. I don't remember that I saw it.

Q. Don't you remember that?

A. I don't remember seeing it here.

231 Q. That is the lock?

A. Yes, sir.

Q. You think that is the letter paper you left there?

A. Yes; I left it with him; when I left the camp I did not think of it any more.

Q. How was the outside of the door fastened?

A. With this lock.

Q. What kind of a lock? Was there a staple?

A. It was a small staple.

Q. Was it on the outside of the door on inside?

A. Outside.

Q. That was used only when Jaconi would go away?

A. He had two locks—one was used all the time and the other he didn't use.

Q. One he used inside? He could use it?

A. No; he did not use that at all.

Q. How many dogs did he have?
A. He had three dogs and the slut—four all told.
That is all.

232 MIKE TOROTICH, a witness produced on behalf of the prosecution, having been duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. Where do you live?
A. Two miles below Chena.
Q. What is your name?
A. Michael Torotich.
Q. You have been there this summer?
A. Yes; and last fall.
Q. Did you know Jacob Jaconi?
A. Yes; he was my partner.
Q. How long was he your partner?
A. He was three different times—we lived together. He was my partner for about three weeks last fall.
Q. What time in the fall was it; what month?
A. Well, I got here on 7th of September. I landed in Chena, and I came up here and staid here three days fishing alone and six days a week, and Jaconi was not catching many fish in the slough——
Q. How long was he with you as your partner fishing?
A. About three weeks.
Q. What month?
A. September we started in together.
Q. Until what time in October did he stay?
A. I could not remember the date, because we did not come to town; I did not come to town for about a week after he left. It was sometime about the 21st of October.
Q. Was it about the 21st or 22d of October?
A. Yes, sir.
Q. Where did he go?
233 A. He went to his camp.
Q. When did you first learn of the burning of the tent?
A. They came and called over at me. Tom Haggerty did.
Q. From the other side of the river?
A. I was at the cabin at the time.
Q. He informed you of the fact that the tent had been burned; what did you do?
A. I took a boat, and I came across. I went through the ice and went back and pulled the boat down and finally got across and made tracks for Fairbanks.
Q. Did you come on up by the tent?
A. No; I came on the telephone line. I did not stop at the tent.
Q. Did you go to the tent?
A. I went about seven days after; when I was going down I stopped at the tent.
Q. How long after the tent was burned did you come to Fairbanks, as near as you can tell?

A. Not long after.
Q. Do you know what day of the week it was?
A. I think the last day of October or the first day of November.
Q. The last day of October or the first day of November?
A. Yes, sir.
Q. You are acquainted with his clothes—the kind of clothes he wore?
A. Yes, sir.
Q. I will ask you if at any time you have seen Jaconi since he left your place about the 20th or 21st of October?
A. No, sir.
Q. You never saw him after that?
A. No, sir.
Q. What kind of clothes did he wear when he was working?
234 A. Overalls; he had outside overalls, and he had jumper, and when he quit working he put on some other clothes.
Q. Do you know what kind of clothes he put into the bag?
A. Some of it. When packing through the brush I think he lost one of the old coats.
Q. Do you know whether he had any suit of clothes there with him?
A. No, sir; he had a suit of clothes in his tent. He had a couple of suits of underwear he used sometime fishing.
Q. Do you know what kind of clothes he had generally?
A. He bought some in Dawson.
Q. What did he buy in Dawson?
A. He bought a suit in Dawson—an overcoat, a shirt, and I remember some other things, but I don't remember all.
Q. Have you been at his tent?
A. Yes, sir.
Q. Have you stopped at his tent?
A. I stopped every time I was coming up with fish. I stopped from four to five hours.
Q. You never lived there with him?
A. No, sir; I never did.
Q. When you were working together he went down and stopped with you?
A. Yes, sir.
Q. You were not there so that you were familiar with what he had in the cabin in the way of small matters, such as tobacco?
A. No; I knew he had his clothes; I don't know the small things.
Q. What do you say—do you see anything here that you ever saw at his place?
A. He had one shirt like that in Dawson.
Q. He had one like that?
A. He had one like that, but I don't know whether he
235 brought it down here or not.
Q. Do you know anything about this? Identification No. 12, a pair of pants?
A. No, sir; I know some of his clothes there.
Q. Did you ever see Jaconi with a watch?

A. Yes, sir.
Q. When?
A. When he left Dawson and when we were fishing.
Q. Did you come from Dawson the same time Jaconi did?
A. The same year, 1898, we go to Dawson.
Q. Did you say you went to Dawson the same year?
A. To Dawson.
Q. When he left Dawson did you leave at the same time?
A. No, sir.
Q. You say he had a watch?
A. Yes, sir.
Q. What kind of a watch?
A. It was a gold watch.
Q. Did you see it frequently?
A. It was a gold watch.
Q. Any other marks?
A. His letters on it, "J. J."
Q. Where were those letters?
A. On the outside of the cover.
Q. Do you know whether he had a chain with it?
A. Yes, sir; he had a chain, but he used a strong cord, a string. He used to fasten it onto his suspenders.
Q. I will ask you to examine this, Exhibit No. 18, and state whether or not you have seen it before?
A. Yes, sir; it is the watch.
Q. Whose watch was it?
A. Jaconi's.
236 Q. Did you know of his having a pocketknife?
A. It was a three-blade knife; pretty good size knife.
Q. How often did you see it?
A. Often, because he used it when he was preparing the nets.
Q. Do you think you could recognize it?
A. I think so.
Q. You have seen this knife since, have you not?
A. I think so.
Q. Do you think that this is the knife?
A. Yes, sir.
Q. It was a knife of that kind?
A. Yes, sir.
Q. Do you know whether or not he had a sweater?
A. Yes, sir.
Q. What kind of a sweater was it?
A. A blue sweater; I think that is the sweater. He had a small hole over on one side.
Q. You think that this is the sweater?
A. Yes, sir.
Q. Did he wear that while down at your place last October?
A. I think he did; I seen it last fall on him, but I don't remember if I saw it in his camp, but I think he had it when he was fishing.
Q. Do you know about him having any other clothes at all?
A. Yes, sir; he had some which I did not see. I know the suit of clothes, and he had an overcoat.

Q. What kind of an overcoat?
A. A long overcoat; black, not quite black.
Q. Do you think you could recognize it?
A. A black overcoat, nearly black; if I seen it I could. Something like that there.
Q. Do you know whether or not Jaconi had a ring?
237 A. Yes, sir.
Q. What kind was it?
A. It was a plain marriage ring.
Q. Did you notice whether he had any other ring?
A. He had my own ring in his pocket.
Q. What kind of a ring was that?
A. One made in Dawson.
Q. Can you describe it?
A. It was fancy on the back and my name, M. T., on the inside.
Q. What are your initials?
A. Michael Torotich.
Q. How did that come to be in his pocket?
A. I gave him to Jaconi, because when I was fishing I might lose it.
Q. You were afraid you might lose it?
A. Yes; because he had a poke, and I told him to put it in it.
Q. When was that?
A. When he was fishing with me.
Q. Did you get it back from him?
A. No. When he was going up he was going to give it to me and I told him you better keep him with the rest of the jewelry.
Q. He did not give it back to you?
A. No, sir.
Q. You have never seen it since?
A. No, sir.
Q. How long had it been before the 29th of October, the time when this tent was burned—how long before that was it that you had been there?
A. Before the 29th?
Q. Yes.
A. Well, I could not tell exactly.
238 Q. You had not been there since you went down the first trip?
A. When we were fishing, I went up there four times.
Q. You made four trips up there?
A. Yes, sir.
Q. Did Jaconi come up with you?
A. Only one time he came up.
Q. Did you stop there together at his camp?
A. I stopped all night three times.
Q. How long before Jaconi left you and came back home—you say he left about the 21st or 22d of October?
A. Yes, sir.
Q. Were you up there after that and before he was killed?
A. No, sir; I never was up there.
Q. How long before that was you there?

A. Seven or eight days before that.

Q. Do you know anything about his having stove wood there the last time?

A. When I was there Mark Scorlich was in his cabin, but I don't know how much he had; maybe seven or eight blocks; sawed blocks. That is all.

Cross-examination by Mr. TOZIER:

Q. Where was you on the 29th of October?

A. I was down two miles below Chena in my camp.

Q. When did you come up, Mike?

A. I came here on the last of October or the first of November, because they sent for me, and Haggerty told me on the next day.

Q. Where did Haggerty live?

A. In Chena.

239 Q. Did he go to your tent?

A. He came up to my camp.

Q. Who was in camp with you?

A. I was alone; Charlie Showers was there a few days before.

Q. Was he fishing there to?

A. He was fishing for himself most all summer.

That is all.

240 PETER VIDOVICH, a witness called on behalf of the prosecution, being recalled for further examination, testified as follows:

Direct examination by Mr. COHN:

Q. Your name is Peter Vidovich?

A. Yes.

Q. How long have you lived here?

A. Since last June, 1904.

Q. Did you know Jacob Jaconi during his lifetime?

A. I did.

Q. Were you intimately acquainted with him?

A. I was.

Q. Were you in the position, and did you know the financial condition of Jacob Jaconi?

A. I did.

Q. Do you know the amount of money and other articles of value he kept with him and in his possession?

A. Some I did.

Q. Will you state generally to the jury, Mr. Vidovich, in regard to Jaconi's financial condition immediately preceding the time that he was killed?

A. Jacob Jaconi he had money on hand and generally always he came to me as a friend, because I am, and ask my advice—possibly what he can do. He came about four days before. I never see him any more, and he speak to me something about money. And at the same time he brought a mallard duck to me that he killed, and I ask him, and I said, "Jaconi, where do you keep your money?" And he said, "Down in the camp." I said, "It is not right to do that. The

bank here, or if you no trust the bank, the N. C. company or some other place, wherever you like." "Yes," he said, "you are
241 right." I said, "Jaconi, the next time you come to Fairbanks you better come to see me and you bring your money along." So he came to Fairbanks the next day, and he brought that money with him in his pocket; there was greenbacks. He brought in my house. I asked, "How much you got?" He said, "I got close to eight hundred dollars." I said, "What you going to do with it? Would you like to leave it in the bank?" I made that suggestion. We go put it in the bank. "How much you got?" He put his hand in pocket, and he take out money, and there was fifty dollars, and twenty dollars, and five dollars, and ten dollars, all kind paper. And he count it out and put in pile five hundred dollars. I said, "What you going to do with the rest?" He said, "I go buy some more stuff. I have to pay for some provisions in Chena, something what I buy, not much. This I keep, this money, with me." And the same time he had some kind of jewelry and some nuggets. He had with him a gold chain and watch charm, his wedding ring, and one Yukon gold ring, which he said was his former partner's. He got me to go; I said, "All right." The reason I went with him, he could not write or read except his own name, and he is liable to make mistake, and I make slip of deposit for it and hand the cash to Mr. Woods. Mr. Woods looks in a book on the counter and asks him if he can sign his name, and he writes his name in book there. I ask Mr. Woods that if I no come with Jaconi again if he kindly make slip of deposit. "I do that," he says. That is all. I count the money.

Q. How much money did he put in the bank?

A. Five hundred dollars.

Q. How much money did he have when he came to your cabin?

A. Eight hundred dollars.

242 That was the last time you saw Jaconi before his death?

A. Yes, sir; on Friday, October 28th.

Q. The day before he was killed?

A. He was killed on the 29th.

Q. Do you know anything about his having purchased any olive oil?

A. He say he had bought olive oil.

Q. How much did he tell you he had bought?

A. I could not remember that.

Q. I will hand you a handkerchief, marked for identification No. 14. Did you ever see that before?

A. I did; either this one or something like that.

Q. Where did you see it?

A. I gave it to him.

Q. I will hand you an article, marked for identification No. 33, and I will ask you if you ever saw that before?

A. I did; something like that.

Q. Where did you see it?

A. Jaconi had it.

Q. Where did he get them?

A. I gave them to him, because he could not purchase them here.

Q. I now hand you No. 22. Have you ever seen that before?
A. I did; something like that.
Q. Who had this?
A. Jaconi; he did.
Mr. COHN. We offer in evidence Nos. 33 and 22.
COURT. No objection. They may be admitted.
Q. I hand you some neckties—two neckties—which may be marked for identification No. 34. Have you ever seen these before?
A. I gave him neckties.
Q. Look at this No. 34?
A. That is the one.
243 Mr. COHN. We offer No. 34 in evidence.
COURT. No objection. It may be admitted.
Q. You don't know anything about these?
A. No, sir.
Q. Did you ever see these handkerchiefs which I hold up before you?
A. I don't know anything about them.
Q. I now hand you No. 29. Have you seen that before?
A. I don't know.
Q. I now hand you Exhibit No. 30. Have you seen that before?
A. I don't know anything about that.
Q. I will hand you an overcoat, marked for identification No. 23. Did you ever see that before?
A. I know that Jaconi had a black coat. I could not say.
Q. What would you say as to whether it resembled this or not?
A. I could not say.
Q. Do you remember having seen a coat and vest marked Nos. 10 and 11?
A. I know he had some in Dawson like that.
Q. What would you say as to it being the same?
A. It looks to me like them, but I would not be sure.
Q. Do you know anything about this shirt?
A. I do not?
Q. Do you know anything about this sack?
A. No.
Q. Do you know anything about this yellow underwear?
A. No.
Q. Did you ever see this corduroy coat and vest, Nos. 3 and 4?
A. I saw him have some; I think he had those.
Q. Here is a pair of pants, marked No. 12, did you ever see these before?
244 A. I saw the pants that he says he has change for corduroy pants.
Q. Did they look like this?
A. Something like that.
Q. What would you say, in your opinion, as to whether or not this is the same?
A. I think it looks pretty much like them.
Mr. COHN. We offer No. 12 in evidence.
COURT. No objection. Admitted.

Q. All these articles lying here—do you recognize any of them, aside from those that have been pointed out to you?
A. No, sir.
Q. Do you know whether Jaconi had a watch?
A. He did.
Q. What kind of a watch was it?
A. A gold watch.
Q. Do you know whether that is the watch which is marked No. 18?
A. Jaconi had a gold watch—gold watch like that.
Q. What would you say as to that being the identical watch?
A. It looks like it.
Q. Are you morally certain that it is the same watch?
A. It looks like the same watch.
Q. Did you look—notice the initials?
A. Yes, sir.
Q. Just like the initials that Jaconi had on his watch?
A. Yes, sir.
Q. What do you know of Jaconi having a ring?
A. Yes, sir; he did.
Q. Did you ever see this ring before?
A. That is the one he had in his poke.
Q. What would you say as to that being the one?
245 A. It looks like the same ring.
Q. I hand you a knife. Did you ever see that before?
A. I think so.
Q. Who had that?
A. Jaconi.
Q. Where did he get it?
A. I recollect I got him a knife in Dawson with the same kind of handle.
Q. Bone handle?
A. Yes, sir.
Q. It looked like that?
A. I could not say positively, but it looks like it.
Q. In your opinion is it the same knife?
A. It looks like it.
Q. I will ask you directly—did you ever see Jacob Jaconi have a poke that looked like that?
A. He did have a poke similar to this.
Q. Of the same kind?
A. I think the same kind.
Q. What would you say, in your opinion, as to that being the same as the one he had?
A. I think so; I could not say positively.
Q. You know he had one resembling that?
A. Yes, sir.
Q. The last afternoon that you saw Jacob Jaconi, I will ask you if you know how much money he had at that time upon his person?
A. The last time I saw him I hand him a bill of sale he put on record and spend on bill of sale three fifty. I paid for it. I hand

him bill of sale, and he want to pay me with bill, and I told him "No; you can give it to me any time." I know that he had three
246 hundred twenty in currency and one gold twenty and only two twenty-five in silver.

Q. During the summer and fall of 1904 how frequently did you see Jaconi?

A. When he came to market to sell fish.

Q. Once a week?

A. Sometimes once a week; sometimes twice a week.

Q. Did you have occasion to know him quite well during that time?

A. Yes, sir.

Q. Did you have occasion to study his habits?

A. I did not.

Q. What was the occasion of his coming to your place?

A. He always like to bring me fish or game or something.

Q. Will you explain to the jury how you happened to give him those presents?

A. When he bring me, sometimes, fish I want to pay him for it. I give to him sometimes something for it just in exchange.

That is all.

Cross-examination by Mr. TOZIER:

Q. What time did Jaconi leave you on the afternoon of the 28th of October?

A. Half past two p. m.

Q. Where did he say he was going?

A. He says he down town to make purchases.

Q. And you have not seen him since?

A. No, sir.

That is all.

247 GEORGE DREIBELBIS, a witness for the prosecution, being recalled for further examination, testified as follows:

Direct examination by Mr. HARLAN:

Q. You have seen these articles exhibited here to-day and identified by the different witnesses?

A. I have.

Q. You may state now who has had the custody of these articles.

A. I had them.

Q. For what length of time?

A. Since last fall.

Q. Where did you get them?

A. I got them at different places; the bulk of them I got in the sack at the cabin of Lodge and Murray's.

Q. Since that time you have had them in your charge?

A. Yes, sir.

Q. All the articles that have been exhibited here?

A. With one exception. I will state the nugget chain was received by me from Edgar Wickersham, and that has been in my possession ever since I received it from him.

Q. Where did you get the other articles?

A. The watch and knife and poke and the two gold pieces I got on his person. The others—the light-colored shirt, this one, and the cap—I got from Dick Hearn.

Q. Where did you get the bag?

A. From the cabin of Lodge and Murray.

Q. All that was in this bag?

A. All the other articles, everything in that bag.

Q. At what place was it you first saw the defendant when you made the arrest?

A. At the cabin of Kane and Johnsons, about forty-five miles down the river.

248 Q. How far below that place was the place of Lodge & Murray?

A. About eight or ten miles; something like that.

Q. You told the jury how you happened to go there?

A. I did.

Q. What was the explanation that the defendant made as to his having possession of these things?

A. He said he received them of two men on the trail the day after he started from Fairbanks, about fifteen or eighteen miles below Chena; that the men were there cooking dinner beside a big stump, and that he asked for something to eat, and that he finally made a trade for the sack of clothes and the watch, and that he gave a nugget chain; that he got eleven dollars and a half, the sack of clothes, and the watch for the nugget chain.

That is all.

Cross-examination by Mr. TOZIER:

Q. How soon after he was arrested did he tell you he got these things, Mr. Dreibelbis?

A. Well, he told me on the way up about the watch, and I think it was on the way up that he told me that the other things were down the river.

Q. That was before you got to Fairbanks. After you arrived at Fairbanks, when did you next hold a conversation with him?

A. I think I held—I know that I held—a conversation after returning from down the river when I got the sack.

Q. Where, in the jail?

A. The principal conversation that I held was in my room.

Q. Which room?

A. The room the clerk of the court now has.

249 Q. Who was present?

A. Edgar Wickersham.

Q. Was that before or after his preliminary hearing?

A. I would not be positive as to that.

Q. What statement did he make to you at that time?

A. He held to that statement.

Q. Did he ever change it?

A. He changed about the nugget chain.

Q. That first statement he made?

A. No.

Q. The only statement he has varied from according to your recollection is something regarding the nugget chain; is that true?
A. That is all.
Q. When did you next hold a conversation with him after Mr. Edgar Wickersham, yourself, and the prisoner were there?
A. We showed him the chain in the front part of the jail and asked him if that was the chain.
Q. What did he say?
A. He said that was the chain that he and Haidukovich had made, but it was not the chain which he traded for the goods.
Q. When did you next hold a conversation with him after that time?
A. I think that was the last I had with him; I would not be sure.
Q. Did you ever hold a conversation with him in the jail, yourself, privately?
A. I may have; not privately; the guards were there.
Q. Could the guards hear what you said?
A. Quite likely.
Q. You are sure of that?
250 A. In fact, I do not remember of any conversation, although I may have had one.
Q. Did you ever hold any conversation with him in the marshal's office in this building?
A. I may have at the time of his examination; he had two examinations, and I might have talked with him at that time.
Q. Were you ever present when some one else held a conversation with him?
A. Vidovich, and there may have been others. I went in as I do with all persons—as I do very often when visitors go in to speak to the prisoners—and I remember that I was in there once or twice.
Q. Do you remember more than two times?
A. I may have been; I would not swear to that.
Q. Did you ever have anyone—one of your deputies—interview him, any assistant, or anyone in your employ as a detective?
A. I never had anyone interview him.
Q. Did you ever have anyone talk to him in your presence?
A. I never did.
That is all.

Redirect examination by Mr. HARLAN:

Q. I will ask you again where you arrested the defendant?
A. Close to the cabin of Kane and Johnson.
Q. The cabin in which they lived?
A. Yes, sir.
Q. Which side of the river?
A. On the right side of the river as you go down.
Q. What day of the month?
A. The fifth day of November, 1904.
251 Q. How long were you in returning to Fairbanks?
A. I got into Fairbanks on the 6th, I am pretty sure.
Q. You are well acquainted with the location of the tent that was burned and where it is alleged that Jacob Jaconi was burned?

A. Yes, sir.
Q. Where is that situated?
A. It is situated about three miles from Fairbanks, at the junction of what I know as the Noyes Slough and the Chena River.
Q. In what precinct?
A. In the Fairbanks precinct, Territory of Alaska.
That is all.

Recross-examination by Mr. TOZIER:

Q. At how many different places did you gather all these articles?
A. I got the bulk of them from Lodge and Murray. I got the shirt and cap from Dick Hearn. I got the watch and knife and the poke and the money that was in it from the person of the prisoner, and there was a razor which has been exhibited here, but was not offered in evidence, which I got from a man named Giddings.
Q. That would be four different places?
A. I think that is all.
Q. Where did you get the chain?
A. I forgot that.
Q. That would be five?
A. Yes.
That is all.

252 Redirect examination by Mr. HARLAN:

Q. I will ask you if you had any difficulty in understanding the conversation of the defendant?
A. He talked in broken English. I had no difficulty, nor did he in talking to me.
Q. None in understanding you?
A. None whatever.
Q. You think he has an ordinary broken accent?
A. I never had any difficulty, in holding a conversation with him, in making myself understood.
That is all.

Recross-examination by Mr. TOZIER:

Q. He spoke poor English?
A. He made himself understood.
Q. You are sure that he had no difficulty in understanding you?
A. No.
Q. His language was so plain that you understood it readily?
A. Not so readily, perhaps, as a American. He spoke—I have talked with others with whom I have a great deal more trouble.
Q. You have talked with foreigners with whom you did not have as much trouble as you had with him, have you not?
A. Yes, sir.
That is all.

253 Mr. HARLAN. I would like to have a few moments before we rest.

COURT. The jury may go out with the bailiffs, and court will take a short recess.

After a short recess court was called to order, and everyone present as heretofore.

COURT. The jury is present, gentlemen; go ahead with the case.
Mr. HARLAN. We rest.
Prosecution rests.
Mr. TOZIER. Now, if the court please, I move the court to now instruct the jury to bring in a verdict of not guilty against this accused, for the reason that the corpus delicti has not been proved; that the evidence adduced on the trial is not sufficient to justify a verdict of guilty against this defendant; that if anything has been proved by the prosecution it is simply corpus alone; that the evidence in no way connects this defendant with the death of Jacob Jaconi or anyone else; that the evidence as adduced by the trial does not support the indictment as returned by the grand jury, and that the law and the evidence will not support a conviction.
COURT. The motion is denied and an exception allowed.
Mr. TOZIER. I now move that the evidence given by George Dreibelbis, deputy marshal, regarding a conversation held with the accused after his arrest, the conversation that was held with him by George Dreibelbis on the trail, the conversation, what was held between George Dreibelbis and the accused at the time Edgar Wickersham was present, and that all conversations held with the defendant by George Dreibelbis be stricken from the record.
254
COURT. The motion is denied.
Mr. TOZIER. I note an exception.
COURT. Exception allowed. Do you wish to make a statement to the jury, Mr. Tozier?
Mr. TOZIER. No statement.

255 *Testimony for the defendant.*

Mr. TOZIER. The defendant may take the stand.
VUKO PEROVICH, appearing as a witness on his own behalf, and having been first duly sworn, testified as follows:

Direct examination:

Mr. TOZIER. I would like to have Peter Vidovich called as an interpreter.
Mr. HARLAN. We object to the use of an interpreter. I think it has been clearly shown by the witnesses that he understands and talks English very well.
COURT. The court has no information other than the statements of the deputy marshal that this witness can talk English at all. If he can talk English I prefer to have it done, but if he can not it is the duty of the court to appoint an interpreter.
(Whereupon counsel for both sides argue the matter before the court.)
COURT. Go ahead with the examination in English and we will ascertain whether he can understand English sufficiently or not.

By Mr. TOZIER:

Q. What is your name?
A. My right name is Charlie Perovich; I get the name Vuko

below—somebody call me Vukon. I run, jump, and all things that kind, and Slavonian call for old, and have that name give to me in school, and they call me Vuko right along; I get called both names.

256 Q. Where were you born?

A. I am born in place called by name right in Greek called Sannagora.

Q. In what country is that?

A. Country of Turkey-Russia we call Russia-Austrian; they call around this place pretty near like this; pretty big.

Q. What does your country belong to?

A. She belong—Russia reign king—she get pretty strong in that country. Every man go away he give name; we can do nothing of that kind before we get permit from Russia.

Q. Are you a Slavonian?

A. I am no Slavonian; no call me Slavonian, no. This country any Italian, French, Austrian, or Dane around in this country all call Austrian Slavonian little district.

Q. A small district pretty near all this country called Slavonian. Is that right?

A. Yes.

Q. Don't explain so much; just answer the quest' and give short answers. Answer my questions. You understand me, do you?

A. All right.

Q. Were you ever in a country called Montenegro?

A. Yes. I am born in right there.

Q. How old are you?

A. I think about—I think on 28th of December this 1905 I just twenty-two years old.

Q. On the 28th day of December, 1905, you will be twenty-two years old?

A. Yes.

Q. When did you leave your native country?

A. When I leave?

257 Q. Yes.

A. 1903, March 17.

Q. I will ask if you ever saw this before?

A. Yes.

Mr. HARLAN. When did you get this?

WITNESS. In my own country.

Mr. HARLAN. Before you left?

WITNESS. Just before.

Mr. HARLAN. This is a passport?

WITNESS. I can not go anywhere in this without passport.

Mr. TOZIER. I want to prove by this the time he left his native country and his age.

COURT. No objection. It may be admitted.

(Marked "Defendants Exhibit No. A.")

Q. Will you tell us just what that is?

A. I could tell just all that I know; I read this here in Slavonian; I can not read this in French and English.

Q. Where did you first come to from where you lived?
A. To this Austria country.
Q. Then where did you go?
A. I go to Kotor city.
Q. Then where did you go?
A. Trieste city.
Q. Then where did you go?
A. I came Trieste city to Seattle.
Q. What city did you come to first in the United States?
A. In New York—I am not sure.
Q. Could you speak English at that time?
A. No.
Q. Did you come across on the railway to Seattle?
258 A. On train; yes.
Q. From Seattle where did you go?
A. On Douglas Island.
Q. When did you get to Douglas Island?
A. I think something about—I am not sure—12th or 16th June, 1903.
Q. What did you do at Douglas Island?
A. Work in mine; work right along.
Q. What kind of work did you do?
A. Tend mill man first three—eight months around machine.
Q. Where did you go from Douglas?
A. I come to Dawson last spring year ago.
Q. How long did you stay in Dawson?
A. I could not tell; I think two and a half or three months.
Q. Did you work there?
A. I work there in different places.
Q. Did you work there as a miner?
A. Yes.
Q. Whereabouts?
A. No. 2 on Bonanza claim, on 25 below Bonanza, and 24 Bonanza.
Q. When did you leave Dawson?
A. I could not remember what month, but I think September; something like that; I could not tell.
Q. Where did you go?
A. Twenty miles below Chena.
Q. What boat?
A. "Cudahay."
Q. Did you leave the boat twenty miles below Chena?
A. The boat stopped there. I work my passage; I could pay no twenty dollars for another boat to take me up there. I got no twenty dollar; I better spend twenty dollar than that I walk up.
259 Q. Then you came from twenty miles below Chena to Fairbanks?
A. I worked five, six, days before come to Fairbanks.
Q. When did you come to Fairbanks?
A. I came first time down Chena.
Q. Were you in Fairbanks on the 29th of last October?
A. 29th?

Q. 29th.
A. I was.
Q. Did you leave here that day or when?
A. I left 28th October from here, by eight or nine o'clock in evening.
Q. Do you know Joe Sica?
A. I do.
Q. Did you see him before you left?
A. Yes.
Q. Where did you see Joe Sica?
A. In his cabin.
Q. Whereabout was his cabin? Do you remember?
A. I could say two streets—three streets back.
Q. When you left there on the night of the 28th was it between six and seven o'clock?
A. Seven or nine o'clock, it looks to me.
Q. Where did you go then?
A. I go to cabin a little over on other side street—this street up here, next over.
Q. He went to Miocevich cabin, he says. How long did you stay at Miocevich cabin?
A. I just go from there. I go to my sack and gun.
Q. When you left Miocevich's cabin where did you go?
A. I leave Miocevich cabin and go right down by the river.
Q. Which side of the river did you go on?
A. On left side.
260 Q. How far down the river did you go?
A. I go about—altogether on left side—on this side of the river—I go, I believe, something pretty near fifteen or sixteen miles. I believe more than that.
Q. Did you cross any river?
A. I cross on one: I come down on this side Chena; a little slough come down alongside the telegraph station; slough come over this way—left hand—and come right in the mouth—mouth of Chena River. I cross this slough and go way down.
Q. How did you cross?
A. On ice.
Q. Did you have anything with you?
A. I got rifle and that bag over there and one pair shoes and some little stuff. I got box shells for my rifle and some little things—pair overhalls in it; about five—six pounds altogether.
Q. Where was the first place you stopped after you crossed the river on the ice?
A. The first place when I cross on the ice—I cross on the ice and I see two or three cabins and I don't know; I think nothing but some Indians and I go right by. I want some and ask something for breakfast, and I see one fellow, and I think he say nothing, and I did not go to him, and I go right by him and come down on that slough, and I follow this slough right along, and I tried to cross here, and I go through this way [indicating] and get wet, and I go back, and I come a little farther and I stopped there and built

big fire and take my shoe off and take my socks off and put them again in my shoes, and I lay down with head on bag and I sleep
261 there for a little while and got up at daylight, and not very cold day, and I get up that time pretty hungry, and I go round, take my rifle and leave my bag and take two or three shells and hunt grub or rabbits or something to eat. I go about twenty yard in brush and I find telegraph line and where couple of men walk on telegraph line; I think about six inches snow that time; and when I come to telegraph line I see track, so I think somebody make camp somewhere, and I come back and get my bag and go back and find track again, and I think I go to camp and I get something to eat, and I keep that track seven or eight miles down river, or about so far; I could not say myself how far, but I know far I go, because it was pretty cold day and pretty good trail too. When I come down from that place seven or eight miles I see fire about hundred yards, some or something, and I think camp made on the trail, and I see some one's big gunny sack laying near, gunny sack—brown gunny sack—and I go to the fire—no tent, nobody near high stump, and big fire right alongside. I could not tell what time it was myself; and grub and piece of meat; it was from leg or something that kind, and when I find this fire and could see nobody I sit there about fifteen minutes and I look all time around, and I see one man come from brush alongside river and look at me for two or three minutes and go right to me. When he come to me—I could not at that time talk good English—I ask him good morning or something. I said, "Pretty cold this morning," and he no answer. I said, "Where you go?" He said, "I believe I go to Valdez." He said, "Where you go?" I said, "Down river to woodchopper or anybody anything." He said, "Do you know how far from here to Valdez; did you ever travel there?" and I said, "No." He asked where I go from,
262 and I said, "Town." He said, "How far from town?"—a name I don't know; I never traveled this country round here before in my life—and I told him "No." I start talk to him and take smoke for myself. He talk something else. He talk about work or something of that kind. So I say, "You got nice chunk of meat here." He says, "Pretty fair." I said, "I would like little. I am pretty poor man; I have got no money to pay for meat." He said, "You pay good price; that is all I got myself, but I have got money to pay." I could speak that—now I could say different. I didn't know when I came to Dawson. He talk some more, and I say, "I got no money, but I got little nugget chain; I give one for dinner." He said let him see nugget. I pull him right out.

Q. Where did you get those nuggets?

A. In Dawson.

Q. Did you keep them with you all the time?

A. Right along, and I pull a string under my underwear right along. I take that time one out, a big pretty one; maybe two dollars in that piece. I said "I give you this piece for dinner." He told me that not enough chain; let him see another one. I show him another. He says "I buy all for you; pay good." I get scared after he say he buy all for me and I keep him back. I took it back. I say "That be

enough for dinner." He say "I buy all." I said "You give how much?" He says "We have to get along without money, I will change watch here." I look at watch. This watch is not enough. I got from eighty—from seventy-five to eighty dollar. He said he cost him outside thirty-five dollars; "How much you want money and this watch?"

Q. I will ask you to look at this watch. Examine it thoroughly.

A. It is No. 14. Yes, it is No. 14. He says it is fourteen gold.

263 I think it is the watch if you no get another watch like it. If you get another very like that. It is the same kind of watch; looks like it any way.

Q. Go ahead. What did you say?

A. I have to see that watch. He said "How much you want money this watch?" I say "You say this watch cost thirty-five dollars." I got eighty dollars, I know that nothing below seventy-five, and he told me "I give you some more clothes because I get them on the trail; some place I get them. I give this watch. You no clothes; you cut timber, you need clothes." I said "I got no clothes, I got good chain; it is money; I get for this gold money any time." He told me "You have to trade anyway." As he talk that was there come another man and after that I get scared. I just get up and stand little way back from this man. He speak to him; "What hell you want buy gold for?" He want to get something for dinner, and he got gold and I offer to buy all he got. I give him some clothes and watch and I buy all from him, and he got another watch in his pocket; it is silver watch.

Q. What kind of looking men were they?

A. The young man twenty-five, twenty-six, maybe twenty-seven; I could not tell.

Q. Did he have light or dark hair?

A. Very light hair.

Q. What was the other man like?

A. Same kind of hair—big man, long arms.

Q. Did they speak good English?

A. I understand them, they talk like Swedes; I could tell difference now.

Q. Did those two men talk together in any language beside the English language?

A. Not that I heard.

264 Q. Did they seem to be the same countrymen?

A. May be; they talked the same kind of talk.

Q. Go ahead, then, with your story; tell what they did—the next thing they did.

A. This one he keep in his hand the gold and I got his watch in my hand. Another fellow he says, "What in hell you have got to do business with him," and he said, "I do it." He pull over this gunny sack and take out pants, that coat and that vest and overcoat, and he says, "I give it to you these clothes and give you this watch for all this gold and give you good dinner and more grub to last until you get to Chena, enough for one meal." I told him I get left with that, and he said, "How much money, same as twenty dollars these

clothes?" He said, "I give it to you five dollars." I ask him I said, "I can't do it, I want to pay for this gold in my money," and he says, "Come, you do it." He says, "How much you want?" and I told him fifteen dollars, and he give me twenty dollar bill. He said, "You got any change?" I said, "No, I got no change." He tell me his partner might have some. I have got nothing but ten and twenty dollar piece, and this one look in his pocket and find dollar and half in silver in his pocket and said, "Give me same ten dollar more anything ten dollar gold piece and I give you this eleven dollars now and these clothes and this watch." I have to think about five minutes. I said, "I take it." I get scared they take it away from me for nothing, and I think I get anything I can. This fellow take the gold all and take his piece money and he laugh like hell and the other laugh at me. Both speak something in English. I could not speak very good English. And this fellow give to me eleven dollars and half and three pieces clothes and this watch. I just put stuff in bag. I bring that bag from Dawson.

265 Q. Just examine that bag closely.

A. This was the bag I got. This was when I got it no—no cut on this bag when I got it at all. This been put in bag since I get it. If you no turn inside out I never seen this before on this bag. This was same bag that I got from Dawson, and I am satisfied this not on bag like this. What do you call him?

Q. Did you have that kind of a bag with you when you left Fairbanks that night?

A. I did.

Q. You won't say this is the bag?

A. I think it is the bag.

Q. You say this hole was not in there?

A. No.

Q. This cut was not in there?

A. No, sir.

Q. Go ahead.

A. I think somebody made cut I see there. I never saw it. I never see this writing, either.

Q. Go ahead.

A. I tried to put same three piece clothes in same bag and I pull string up close. The other fellow he get this white piece in that big roll, and another said "Give this to him; take it roll." I said, "What you got in there?" He said, "Couple clean shirts, few neckties, and few pair socks." I threw it—I threw it right in my bag and he help me, and I tie with piece rope that belong to me and I sit down there and take another smoke, and I said, "Now give me something to eat," and he pull out chunk of ham—lot bone, not much meat on it, and he says, "I give you this," and takes pretty near whole loaf bread, not bread we make in town, bread we make some place in mine. He said, "That good enough for anybody," and

266 I put that in one hand and put bag on my back and go.

Q. Which way did you go?

A. Right down on the telegraph line.

Q. Do you know how far you went before you stopped?

A. Six or eight miles.
Q. Do you know Dick Hearn?
A. I do.
Q. Did you stop at his cabin?
A. I did.
Q. That was the first cabin you stopped at after leaving here?
A. Yes.
Q. Did you stop there any length of time?
A. I came by that watch that I get from these two men same time, half past three o'clock, and he ask what time it was, and I pull out this watch—by this watch half past three that time.
Q. How long did you stay there?
A. Half past three o'clock until next day ten o'clock.
Q. Did you pay him for your board and lodging?
A. I did not. I ask him for work; I ask him for anything to do. He tell me he no got anything to do. I am sorry for poor man in this country, because I poor myself. I guess maybe I can help you in one way. I got be road house below about fifteen miles where I keep it last winter, and I send you down and give you note to couple of friends of mine that chop wood for the N. C. Company, and maybe they give you job. If you no get anything to do I will give to you job at my station. I want to help you. He made little, and said you go chop some wood for these men. They help you.
Q. What else?
A. He told me this, and I said that you best friend I ever
267 found in this country. He said, man, that is all I could help you. And he said if you get anything to do. He ask for little grub maybe. He said you fix up cabin little, and he said you come back and me and my partner maybe we take you around and give you grub stake. I said that is best thing I can do, and I live there that night, and in morning I get up and get breakfast and he make note to these two friends and give me note to chop wood at wood camp. I leave there and go down river.
Q. What did you start down the river in the first place for?
A. For to get work.
Q. What were you going down the river for when you started from here?
A. When I come from Dawson I see lots wood camp, and I feel pretty sure I get something to do.
Q. Go ahead; you were talking with Hearn.
A. He gave me a nice chunk of bread to eat, and he told me about five mile down I find the boys stop on kind of slough, and he said nobody bother you. When I go this five miles I stopped at one cabin alongside trail. I think it was white man. I come in front of this cabin. I hit on door and a man come to open door; a Siwash Indian. I came in; I was cold in my hand, and sit down behind the stove to get warm.
Q. Anyone else there?
A. A white girl. She speak and jump on him and she nothing but laugh all time. I told the girl "Where you come." She says "My papa stop on boat." I said, "What boat?" She said "That

boat"—some name I no understand. I said "I go, miss, and ask you papa to stop all night," and I leave some time with that little girl and come to boat right in front of bank.

268 Q. Do you remember what boat that was?

A. I could no say.

Q. Do you remember the lady who testified this morning?

A. That lady, she on the boat. I put my rifle and bag down, and I go on ladder. This man come up, and then come in this lady. I see four five men were below working some, and I told him good day. She said, "You have been traveling?" and I said, "Yes." She said, "Where you come from?" I said, "Fairbanks." She said, "Where you go?" I said, "About five miles from here." She said, "You see people on trail?" I said, "I see some." She tell me, "How trail from here to Fairbanks?" I said, "Pretty good some places; if you go on telegraph line, pretty good trail."

Q. How long did you stay there?

A. I staid there about ten minutes. She said, "I believe you are cold;" and I ask how far from here to another tent.

Q. Did you eat anything there?

A. I eat something there—slice bread and something, and cup tea. Husband he tell me go on one slough and take telegraph line and go about two miles below to one woodchopper that stop there; you can stay all night. I get there; nobody in cabin; door shut; I leave my bag and rifle close to cabin and five yards; this man come from river bring bucket water. I said, "Good evening." He said, "Good evening." I said, "I got letter for woodchopper. I think I go down ten, fifteen miles; I don't know myself."

Q. Did you tell him you were going down there to go to work?

A. Yes; because I could not read, I think he might josh me some.

Q. Well, did you stay there?

A. He said, "You his partner?" "No;" I said. He opened door, and I came inside and sit down alongside stove, and he

269 start make nice supper, and I stop with him all night.

Q. When did you leave in the morning?

A. Eight nine o'clock.

Q. Then where did you go?

A. I go right down by this camp and find another wood camp. I call, "Anybody in?" and one fellow says, "Come in." I go inside, find two men who speak Norwegian, or like it, to me; I ask for something to eat, and he give me cup tea. I want to pay and give this same ten dollars. I give him it; I said, "I have no change." He said, "I never charge any man that travel; I give you a meal, you stop all night for nothing." I leave there, I think four o'clock in the afternoon, and I come to some place; I see nobody in this camp, and I see nobody living there, and I hear this man fall tree that way back in brush.

Q. You heard some one chopping and sawing wood in the brush?

A. I go in brush and find these two men on log chopping. I go to man—I see him witness here yesterday—and I tell him, "Partner, is you the name on that note?" and he says, "Yes." He said, "Did you see him?" and I said, "Yes." He said, "He sent you?" and I said, "Yes."

Q. Did you read English writing?

A. I can't read anything like that; I read by letter; I can spell it.

Q. Go ahead.

A. Well, when he read this letter, he said, "I got just as good a job for you; fifty-eight cord wood; we go split it to-morrow." I said, "That good enough." He said, "All right." I go to camp and take smoke, and his partner they came in with me and told him I come from Dick.

Q. Did you stay any length of time?

270 A. I staid; first morning start chop split wood, and I split wood for three days, and the fourth morning he says, "That is all I going to do. You can go and fix up cabin that belong to Dick." I get him grub that have enough to do for this time. Well, I come to this cabin about hundred yards from that camp and build big fire. I did around two three places and fix it clean all inside and fix it up before noon, and I come back to dinner—about dinner time—and get dinner with these two men. He said, "Partner, for what you do I pay you these three days' wages. You go back to Dick and get some grubstake, and you can keep his road house. I got something for you to do, and if you no like work for me all right. No miner like to work for anybody."

Q. How long did you stay at their place?

A. Three days altogether; fourth day I left.

Q. Where did you go?

A. I came back same way on river.

Q. Where did you stop that night?

A. With same two men that I see before these two Swedes that I talk to.

Q. You stopped at the cabin?

A. Yes, sir.

Q. Who did you see there; anybody?

A. Nobody but them two Swedes or Norwegians. They ask me, and I tell them I go get grubstake.

Q. Do you mean the fellows you got these goods from?

A. No; woodchoppers.

Q. You stopped there with them that night?

A. All night I stop with him, and in morning I get up and get breakfast. I get fifty dollars money, and I pull from my poke twenty-dollar bill, and I ask what he charge for the supper,

271 dinner, and breakfast. He said, "I don't charge for you anything; not if you come fifty time, I don't no charge you anything," and when I go I go about hundred yards, and I forget my gloves. I go back for my gloves and come from cabin again, and I see somebody from river with dogs, and I think to myself that maybe somebody go up with me for partner—go up together—and I go up front of him on bank and look, and he look at me from river, and he go right up to me, and I stay there, and he say, "Good morning." I said, "Good morning." He said, "Good morning" back again, and he look some time around. He said, "Who is this; where did you come from?" I said, "From below, ten miles." He said, "When did you come?" I said, "Last night." He said, "What you do

down there?" I said, "Chop wood for three days." He said, "What is your name?" I told him Charley, Charley Mitchell, because where I work I sign that name for myself, because that is what they call me sometimes. They call me Charley Mitchell in Seattle—some man.

Q. Who was this that was talking to you?

A. Marshal Dreibelbis.

Q. He asked what your name was?

A. I told him Charley Mitchell.

Q. What did he say?

A. He say, "Didn't you make a mistake, partner," or something like that, and I told him—I say my name Charley Perovich. He said "I thought you was the guy I was looking for." He said, "You got any gun?" and he puts his hands in my pocket and took watch out and poke out of same pocket. I put this twenty-dollar bill, which I think I pay for breakfast right in bottom of my pocket. I started to go, and he said, "Come on with me," and he said, "You go take hold of sled, and I ride sled all time." Sometime ride; sometime run.

Q. Where did you stop that night?

272 A. Before night we come to camp, and he said we better stop here and get dinner. And he take from me knife that was in my pocket.

Q. This knife?

A. I don't know; it same kind; something like that.

Q. Where did you go, to Fairbanks?

A. From the same two men where he stop. I asked for the knife to cut tobacco.

Q. Where was this?

A. Sitting on the bed.

Q. You slept on the bed that night?

A. I sleep.

Q. Where did you sleep that night?

A. One place; same road house.

Q. Who did you sleep with; did you sleep alone?

A. I sleep with Mr. Dreibelbis. No; I sleep in same bed. He put something on my leg and we sleep together like two brothers.

Q. What time did you get up the next morning?

A. I can't remember, eight, nine o'clock.

Q. Where did you go from there?

A. We go, I think, all day, all day long and came up about two or three miles below Chena, and we came to cabin and we stopped. We went in there and get dinner.

Q. Did you stop there for dinner?

A. Yes, sir.

Q. About what time—twelve o'clock?

A. After.

Q. Where did you go then from there?

A. We came right up in Fairbanks.

Q. Where did you go?

A. He took me right to jail and give me supper right away. It was about ten minutes after six o'clock.

273 Q. Did you have any talk with Marshal Dreibelbis after he arrested you on the way up to Fairbanks?

A. I have talk with him, sure. He said you got a pretty swell leg; these are too small and he laughed, and he said you got a pretty good bunch here. And when he look in my pocket, he said something wrong with you ; you got lots of money.

Q. Which way did you come up from Chena to Fairbanks?

A. On the river, on the ice.

Q. On the Chena River, did you?

A. Yes, sir.

Q. Where did he ask you about the fisherman?

A. When we was down here about—when we come this side Chena about five mile. He say which was you go when you leave Fairbanks. I said this time you go to Chena and cross on ferry below. He told me, did you leave nighttime the town? I told him I leave nighttime. He ask, you stop with one man fisherman all night. He don't call by name at all. I says, I don't stop with anybody before that—this man; I never stop with anybody.

Q. Did you sell anything that you got from the two Swedes when you were down the river—sell or give away anything?

A. I never sell anything for money or anything else, but I give to this Dick when I leave in the morning. He ask me if I got any kind shirt and I said I think I have, and I give him one shirt.

Q. What kind of shirt?

A. I think this shirt that I give to him.

Q. Did you have a razor?

A. What razor?

Q. Did you get a razor from these two Swedes?

A. From these, all together, razor, same man that I get knife.

274 Q. Did you sell one of those razors?

A. I sold one to where I stopped down below the first night.

Q. Did you tell those men down there that you got that watch at a raffle at Douglas Island? That you bought three tickets and got the watch for a ticket?

A. I did.

Q. Why did you tell him that?

A. I told him I get this watch pretty cheap. I think this man going to buy from me and that he might want to get him cheap if I told him how I get the watch, but he never want to buy it.

Q. You didn't tell an untruth?

A. I told him I won't part with this watch for ninety hundred dollars.

Q. Did you have a ring?

A. Yes.

Q. What kind of a ring was it?

A. It is Yukon ring—I can get it on my small finger and I told this fellow that I was working for it is large on you take him off.

Q. Where did you get it?

A. I get the ring in same—that little poke—that same one.

Q. Did you ever see that poke before?

A. I think the same one I find in that stuff.

Q. Where did you find that poke?
A. In the same coat in that black coat in this front pocket.
Q. Do you know a man by the name of John Packege, the Slavonian who testified here—do you know anybody by that name?
A. Not by name.
Q. That is the man who testified yesterday that he loaned you two dollars.
275 A. I remember that man.
Q. John Pakege, do you remember seeing him?
A. I see him.
Q. Did you ever have any dealing with him?
A. What you mean by that?
Q. Did he loan you any money?
A. I no loan money for anything. I was working in Fairbanks restaurant and I asked him to let me off one shift. I was on shift all time two, three, four weeks, pretty long time, and I remember that man asking what my name and I told him Vuko Perovich.
Q. Go ahead. What kind of talk did you have with John Pakege?
A. I finished my job. This man told me he knew Perovich. He said one name Chris, another by name Mike. And he said he saw them some place where they were together, and he told me pretty nice boys, and I said "I am glad to hear any man who speak of them as nice boys," and I said "I should be one myself pretty nice boy."
Mr. HARLAN. I think the witness should answer the questions and not make such long statements. We can't object to anything in this way.
COURT. Go ahead, gentlemen.
Q. Did he lend you two dollars?
A. No, sir; he loan me one dollar. I ask him if he give me one dollar on watch, and if I pay he is to give me back watch, and I give him old watch.
Q. You gave him your one dollar watch for one dollar?
A. Yes, sir.
Q. Where did you get that watch?
A. In Dawson.
Q. Did you ever have any talk with John Pakege about stealing money from your countrymen?
276 A. I never did.
Q. Did he ever ask you to pay him back that two dollars?
A. He asked me to the next day following this one day. He never did give me two dollars. He ask me for one dollar; he said the watch was no good. I said, "You damn fool, if it was any good I never give it to you."
Q. Did you ever tell him that you would not pay it; that you would kill him—fix him?
A. I did ask him. I say, "I get even with you."
Q. You never said you would fix him?
A. I can't say that fix; I no speak to him that way.
Q. Do you know John Stratton?
A. I do.
Q. Did you ever go to the fish camp two or three miles down the river with him?

A. I did.

Q. Did you ever tell John Stratton that you would lick your countryman and take his money from him? Do you understand what I mean?

A. I understand.

Q. Did you ever say to John Stratton that you were going to lick that man and steal his money?

A. No, sir.

Q. Did you hear what he said here?

A. I heard what he said; I did not.

Q. Did you ever talk with anybody that night in the Slavonian language?

A. I never talked to anybody Slavonian language.

Q. When you were at the fish camp down there John Stratton said you went up to the door and talked with some man inside in Slavonian.

277 A. We got both far away from the tent and I never did go to tent, and the dogs they howl and he was in front of tent and he picked up big stick, and somebody said, "Sick him." He said, "You know how far from here to town, Chena." He said, "Three or four miles." He said, "You go in boat." He said, "No; we got to walk." He said, "I think a little over four miles." And we left there and I said we better go back and get on telegraph line. He said, "You go ahead through brush and get to telegraph line." We go about hundred yards and we get on trail. We went down to see if some boat come in from outside so we get some work.

Q. Where were you and Stratton when you were talking on the trail?

A. On other side of cabin. He call me over again to that man that talk. He says, "I believe he got a pretty big bunch of money." He said he believe every Slavonian around this country have good money. I said, "How you know they have money?" He said, "I see in Douglas Island fifteen hundred men," and he said "They no get clothes here; he just save money; never keep money in bank; never keep in company store; always keep him on him."

Q. Did you tell John Stratton that there was another house below here, a ranch or farm where you had staid all night, and that you were going back there again and fix somebody and get some money?

A. I did not.

Q. Did you tell John Stratton that you were going to lick the fisherman with an ax, "the son-of-a-bitch?"

A. I never said that to John Stratton or anybody else.

Q. Did you stop at that farmhouse that night?

278 A. I came from Chena—I came first time across ferry about seven, eight o'clock in evening, and it came rain all day and afternoon the rain go like hell, and he said, this man he said, "You go across how far?" And I said, "I don't know how far to Fairbanks and too much rain to-night; I think it best for me to stay all night."

Q. When you went down with John Stratton that night where did you go?

A. I go down Chena.

Q. Before you got to Chena did you ask John Stratton to stop and make a camp?

A. When we come close down to that farm we found three—two three men, I could not tell, sleeping right in the brush, laying right alongside the road, on this side, and he said he tired. Well, I say, "If you can't walk; if you think you can't walk lets build fire here." He said, "We have to walk in now; we walk down to Chena."

Q. When did you come back from Chena to Fairbanks?

A. The next day about twelve o'clock we got some work poling small boat—myself, John Stratton, and I don't know him by name, he says he was Scotchman. I don't know his name, and we get work on that boat and start twelve o'clock and got away about four or five o'clock and we pole that boat up four, five miles. I was pulling all time because they say I could not pole right. And John Stratton he said "You take pull rope." Then he said we go pole up on other side of river and he said throw rope in boat and these men they pole up on other side of river. I told them come back after me, but they won't. I stopped there all night. I told it to two three other men in another boat, and I leave them away all night I was alone. The next morning I meet them again.

Q. Just a moment. Where did you spend that night?

A. No place.

279 Q. Did you at any time stay at the fish camp? You know where the fish camp is?

A. I know the fish camp. Once.

Q. Were you ever there besides that one time?

A. No.

Q. Did you see any man there, your countryman?

A. I saw Mike Scorlich.

Q. Did you talk with him?

A. Yes, sir.

Q. What conversation did you have?

A. I was on that trip there from here to Chena. I go over to get that railway trail, and I go and look and find that telegraph line, and I walk down three or four miles, and I come to slough, and I leave telegraph line and go right straight across, and when I come down about hundred yards from mouth—about twenty feet wide. Then you come down around it is little wide; you come down there two or three poles across, and I come over across slough that way.

Q. Did you see any dogs there?

A. When I cross that slough, four five dogs— I can't tell, four five dogs jumping and raising hell. I keep going and somebody push open door. And I told him "Good morning." I told him good morning in English. He started to speak to me in Slavonian. He ask me where I go. I said I go down to Chena. He said, I think, "You work in Fairbanks." I said "I just quit two days ago." I asked him for light and he call me inside. I was not cold, I will take light. He has nothing on—just get up.

Q. Did you notice anything about his hands?

A. He had his hand wrapped up; he ask me to build fire. I

find four five little pieces wood in front of stove there, and I
280 built fire for him; he get up, wash his face and hands.

Q. How long did you stay there?

A. He put on clothes and I built fire; he come to fire and fish and coffee; he told me eat. I said, "I am not hungry, and I got one loaf bread in my pack when I get hungry." He said, "That is all right, partner, you come and eat breakfast and I leave this bread on table." I ask him if there is anything down to Chena, and he said, "I think nothing at all." I said, "I go try it anyhow, I may get something to do on boats." He say, "You can't tell; try for everything." I left that afternoon. He said, "Here," and he give me a little piece T. & B. tobacco. He said, "You take tobacco for your pipe and some matches." I leave and go hundred hundred fifty yards to telegraph line, and when I get to telegraph line I go down it about half mile and I meet one old man; I see him lots times this winter when we are around the street. He comes from Chena. He ask, "Where you go?" I said, "Chena." He said, "I think one come out afternoon sometime." I think to myself I better come back and speak better English, maybe I get job for him.

Q. What did you do then?

A. This man call me, "You go back, you no walk far."

Q. Did you then come back here or not?

A. Yes, sir; I did.

Q. After you got back here, did you then see Mark Scorlich?

A. I see Mark Scorlich; I can't say the same evening or next day; but I think same evening.

Q. Whereabouts, do you remember?

A. I think in Fairbanks saloon.

Q. Did you talk to him?

A. I said to him, "You are all right." He said, "I am right
281 out of hospital."

Q. Did he say if he was well?

A. He said, "I just see my doctor—my finger be all right."

Q. Did you speak in English or native tongue?

A. Slavonian.

Q. Did you talk any further with him at that time?

A. No, sir.

Q. Have you talked with him since?

A. I talked with him after that. I think it was in Fairbanks. He told me—I can't tell what place; he told me, "Do you see this, my partner," and I told him "I see a man there with red mustach'." I get supper that evening and we talked something else. I can't tell what was else we talk, but I could never say Mark Scorlich before.

Q. Do you remember a witness who testified yesterday by the name of Giddings, who said he bought a razor and rifle from you?

A. Yes.

Q. Do you remember what he said here about buying something from you?

A. I think he buys from me a razor and rifle and give me twenty dollars gold and five dollars and I give him dollar and half that I get from these two men, silver change, and I give him one pair socks.

Q. Did you also give him some cartridges for this rifle at that time?

A. I think I give him one box cartridges; I am not sure it was one box or not.

Q. Did you sleep with him at this cabin?

A. I sleep with him on one bed. I sleep light; I was part time awake.

282 Q. Did you ever know a man by the name of Anton Balish, a countryman of yours?

A. I know one Anton Balish, but he is no countryman; he is Europe man, but no countryman.

Q. He was the man who testifies this morning—man with whiskers?

A. That is the one.

Q. Did you ever, at any time, talk with Anton Balish about going down anywhere or going anywhere to rob or steal some money from people?

A. I think when I came from Dawson last winter first time I was with Joe and Peter Viticher, and I sleep one night in that cabin, with partner of mine, and I sleep there that night, and in morning I leave and I come next time. He says, "I have scrap with you. What you do with my razor that belong to me?" I said, "I do nothing with it." He raises hell and make trouble. We both fight a little, and I look for marshal.

Mr. HARLAN. If the court please, he is not answering the question.

COURT. Tell him to answer the questions, Mr. Tozier.

Q. Where was Anton Balish living at the time you slept in the cabin?

A. That was cabin where I was sleeping.

Q. Where was it—here in Fairbanks or across the river?

A. About mile and half across slough.

Q. What countrymen were these men who stopped there, if you know?

A. Three countrymen same as I am, and this Anton, he was Austrian.

Q. Did you tell this Anton Balish one morning when you went over to his cabin that you wanted to go to a road house and steal some money?

A. I told him, just before that, he make trouble when I first come back from Dawson; I had no kind of talk with him.

Q. Did you ever ask him to go with you to steal some money?

283 Did you tell him you saw one man with big roll of bills like that [indicating]?

A. No, sir; I never have any kind of talk, because I was in trouble with him first time I get in Fairbanks.

Q. Do you know a man by the name of John Galvin? He is the Russian Finn who testified here this morning—the first man that testified this morning. He said that he was standing in the saloon and you came by.

A. I never saw that man before in my life that I know of.

Q. Did you go up to that man John Galvin in the Lacey saloon and begin a talk with him?

A. I can't have; I never saw the man before.

Q. You heard what that man testified to?

A. I heard, but I don't know myself what he talk about.

Q. Did you ever talk with that man between the Lacey saloon and the other building there—in that little alley way?

A. I never talked with him—I never saw that man—I am not sure I never saw him—I am sure I never talk; I never have any kind of talk. I might have seen him anywhere.

Q. He said that you went out there and talked about twenty minutes with him, and he said that you told him you were broke.

A. I did not.

Q. He said you wanted him to go with you to a place five miles below Chena where two fishermen worked and rob these fishermen.

A. No; nor nothing like that; sure, for I never spoke to that man; I never saw that man in my life that I know of before.

Q. Do you remember when John Stratton was on the stand he said that when you were leaving this fish camp and starting down the trail that you told him were going to kill that son-of-a-bitch, and that you would take his money.

A. I never said anything of that kind.

284 Q. Did you tell him that that man was an Austrian and that you would take his money?

A. No, sir.

Q. Did you tell him, John Stratton, that you was a greenhorn?

A. Greenhorn. I know what green is, but I don't know what you mean horn.

Q. And that if you killed a man no one would think you were guilty? Did you ever tell John Stratton any talk like that?

A. I never make that kind talk.

Q. Do you recognize these articles about here—any of these?

A. Some; I don't know all, to be sure.

Q. I will ask you to look at this razor, marked identification No. 28.

A. I could only—it looks like this. I don't know whether this is the one or not, because I never shaved with that razor. I sell a razor to the man I sell the gun.

Q. Did the razor you sold look anything like that razor?

A. I sold him—to this man—one razor, the same man I sell him rifle. I don't know for sure.

Q. Was there anything that resembled this?

A. Same clothes that was in that bundle.

Q. Look at this coat (No. 10).

A. A same kind; I don't think anybody change it. I think this same one.

Q. Look at this overcoat, Exhibit No. 23.

A. I don't know; that coat look like it; it has pocket in it; it may be same coat.

Q. Look at this, identification No. 22. What do you say about that?

A. It looks like the same kind of cap. It was cap of that kind that I give that man.

285 Q. Does that look like the cap you got at that time—that you got from those men?

A. It look like it.

Q. Look at these clothes, No. 28.

A. I just use these clothes coming up to Fairbanks; the marshal took them away from me.

Q. Look at identification No. 1.

A. I think that is the same shirt I give that man.

Q. That would be Dick Nearn?

A. Yes.

Q. This is identification No. ; state if you have ever seen this before.

A. I get them in same bag, and I use that myself for about a week. The marshal take that away, too.

Q. Where were they taken from you?

A. From the jail.

Q. After you used them about a week?

A. Yes, sir.

Q. Look at identification No. 31.

A. I get some paper in that sack; I don't know what kind of paper; I think same kind of paper.

Q. This is identification No. 33. Did you ever seen anything like that in that stuff?

A. I think that is towel I bring when I leave from the old country.

Q. Did you bring that with you?

A. I get some from my old man; he give me when I leave.

Q. Did you bring that to America with you?

A. I get another towel. I just keep him like one treasure.

Q. I will ask you to look at identification No. 14.

286 A. I can prove nothing like that. I had one something like that, but I could not prove that.

Q. I will ask you to look at No. 9.

A. I use him that marshal took it away from me—this one pair pants, one shirt, two shirts, and one pair drawers.

Q. Where did you get this stuff?

A. I get that stuff from same two men.

Q. I will ask you to examine identification No. 26. Open that box. Did you ever see anything like that before?

A. I see that before, but I don't know where it was myself. I keep it and if I get job I give it to somebody.

Q. I will ask you to look at identification No. 25, and ask you if you ever saw anything like that before?

A. I see that kind in that stuff, but I could not prove how many; I give it to this man for some T. & B.

Q. You got some T. & B. tobacco from him?

A. Yes; I get trade.

Q. I will ask you to examine identification No. 32, and ask you if you ever saw that before?

A. I don't remember that—I might; I don't remember.

Q. These articles that I have shown to you that you do remember are articles that you had in your possession; did you ever have them in your possession?

A. No.

Q. Did you ever own—did they ever belong to you?

A. That stuff belong to me. That stuff belong to me for two or three days before the marshal take them away.

Q. This is identification No. 13. Did you ever see that sweater before?

A. In the same stuff that I got. I wear it myself to work in. I wear it when the marshal arrest me, and I wear it in the jail.

287 Q. You say you had it on when the marshal arrested you?

A. Yes, sir.

Q. I will ask you to look at identification No. 3; did you ever see that before?

A. I buy this; I get this; that overcoat I buy from them two men; the rest they give me.

Q. Look at identification No. 12; did you ever see that before?

A. I think so; I am not so sure.

Q. Now at the time you purchased these articles from those two men did you see this coat?

A. I saw this coat and this vest; they look the same—that big coat and this they look the same. The rest of the stuff was in the bundle.

Q. I will ask you to look at identification No. 29, and ask if you ever saw that before?

A. I can't say anything; I am not sure. I take a long look at it; I am not sure of it.

Q. Did you see anything of this kind in that stuff? I present necktie not marked, but put in evidence, and which I now offer in evidence and ask that it be marked "Defendant's Exhibit B."

COURT. No objection; it may be admitted.

Q. I will ask you to state if it was there with the rest of the stuff?

A. Yes, sir.

Q. I will ask you if in that stuff you got any handkerchiefs?

A. I get some kind handkerchiefs; I don't know how many; I know I see some.

Q. Did you see any suspenders, No. 30?

A. I see these same kind, one pair.

Q. How much money did that man down at the wood camp pay you for three days' work?

288 A. Fifteen dollars—five dollars each day.

Q. After you left that place and came back up the river toward Chena, where did you leave these articles; you left them some place?

A. Where I worked.

Q. Did you ever go back down there again?

A. Yes; I go get some grubstake and stuff and go back to chop wood, and if I no get enough grub I have to go to work for him.

Q. Did you have a talk with Marshal George Dreibelbis and Chief of Police Edgar Wickersham in the room over here used now as the clerk's office?

A. I did.

Q. What did they talk about there?

A. They talk all about that stuff. I said to marshal, "Where you get this stuff?" I said, "I here alone, you two men." I talk, "You may be something I don't know. I don't know what you mean. If I no hear something—I don't know everything you mean. I want my countryman."

Q. Did Mr. Wickersham or Mr. Dreibelbis show you a nugget chain in that room?

A. No, sir.

Q. Where did they show you a nugget chain?

A. Mr. Marshal show me a nugget chain in court room.

Q. In the United States jail?

A. Yes, sir.

Q. When was that?

A. I can't remember; some time after I was arrested; about fifteen days; something like that.

Q. Who was with you and Marshal Dreibelbis when he showed you the nugget chain?

A. I could not remember everybody. I saw Mr. Charley Irish, a little fellow who guard jail.

289 Q. Could he hear what you said?

A. Yes, sir; he show me chain. He was right there and hear everything I talk.

Q. When were you placed in jail the first time; that is, the only time?

A. I believe——

Q. Do you remember what day?

A. I could not remember what day.

Q. Was it November last year?

A. Yes, sir; November last year—1904.

Q. Since you have been in jail has anyone been helping you to learn to speak English?

A. Yes, sir; John Conner, John Rosen, and other boys in jail.

COURT. Gentlemen of the jury, when court takes a recess it will be until nine thirty to-morrow morning. You will remain in charge of the marshal, as heretofore, and you will remember the admonition of of the court not to talk to anybody nor permit anybody to talk to you about this case nor discuss it among yourself.

The marshal will take charge of the jury and court will take a recess until 9.30 to-morrow morning.

290 FAIRBANKS, ALASKA, *August 3, 1905.*

Court convened pursuant to recess at 9.30 a. m., and all parties being present as heretofore, the following proceedings were had:

VUKO PEROVICH, the defendant, recalled on his own behalf, testified as follows:

Direct examination continued by Mr. TOZIER:

Q. When we adjourned last night you were speak' of some boys in the jail who were helping you to learn to speak English. Who did you say they were?

A. Mr. John Conner, Mr. John Roson, and a fellow they call Charley; he can't hardly speak English either.

Q. When did you first open the bag containing the articles, clothing, and other things that you got from the two Swedes on the trail?

A. I open first time this roll inside tent—in roll—he tied up in my bag—five miles below where I leave these Swedes.

Q. Were you then on the trail going down the river?

A. A little cabin—two Swedes was in same cabin—same get bucket water, and I was stop there and build fire in same stove, and some of clothes—pretty dark all same. I remember it in this vest.

Q. Did you then go through the pockets of the clothes?

A. When?

Q. You open this bag in the cabin. Did you feel in the pockets of the clothes to see if there was anything in them?

A. I just take that little vest; I look at it; I like that color; look him over, and I feel something with my hand, and I take him out and I get one ring.

291 Q. Did you ever tell John Stratton that you would kill the man at the fish camp and throw his body in the river?

A. No.

Q. Did you ever tell John Stratton that you would kill the man at the fish camp and burn his body, burn him up?

A. No.

Q. You remember a witness who testified by the name of Robert Kane?

A. Robert Kane?

Q. Yes.

A. I remember name, but I don't remember what man it was.

Q. He is the man who said you came to his cabin about fifty miles down the river—that you came there about ten o'clock in the morning, and he said you told him you were going down the river to get work.

A. I went one place. I come ten o'clock at wood camp and I meet two men look like Swedes, and they were good men, whoever they was, and I stop and get breakfast.

Q. Did you have your bag with you then?

A. I bring it—I never bring it in cabin.

Q. How long did you stay?

A. An hour—half hour.

Q. Then where did you go?

A. Down to these two men where I go fix up cabin and get work.

Q. Then did you come back to this cabin later where Kane was—where you left the bag outside?

A. How is that?

Q. Did you come four or five days afterwards—you stopped at the same cabin again?

A. Yes, sir; I did.

Q. That is the place you told the men the watch cost thirty dollars and the ring cost eight dollars; that is the place?

292 A. That is the place.

Q. Vuko, when you left here you say you went down on this side of the river?

A. I did.
Q. Do you know Joe Sica?
A. I know Joe Sica well.
Q. Did you see Joe Sica just before you left?
A. I see him about half hour before I leave.
Q. Did you have any trouble with Joe Sica?
A. He find me in his cabin, and he want to arrest me, and I think that marshal know me and arrest me and I offer to pay him if he don't arrest me. I offer to fix it with five dollars.
Q. Why did you go down on this side and not go down on the other side, where the best trail was?
A. Because Joe Sica say he put the marshal on me and have me arrested, and I was scared, and I think he go fix it with marshal, and he think I go on that trail and catch me, and I go right through the brush.
Q. Did you know Jacob Jaconi?
A. I never know him by name. I never know, but I know one man that was down there, and I know he speak Slavonian.
Q. How many times did you ever see this man who spoke Slavonian with you down at that tent?
A. The first time I see that man in my life was when I was coming poling small boat from Chena to come up here.
Q. When you went down from here that time, going away down the river, did you see this fish camp when you went down?
A. I didn't pay attention to look around; it was pretty dark night that night, and I see another cabin on this side at wood camp.

Mr. TOZIER. Take the witness.

293 Cross examination by Mr. HARLAN:

Q. When was it you came down the Yukon to the mouth of the river?
A. "John Cudahay" from Dawson.
Q. You left that where?
A. About twenty miles below Chena.
Q. The "Cudahay" came up the river and stopped there?
A. I came up.
Q. You came up to about twenty miles below Chena and got off there?
A. Yes.
Q. Did you stop any place?
A. I stop in one fish camp—two men—I forgot his name; one name Anton and another Harry.
Q. Did you do any work there?
A. I work—I don't remember—five, six days.
Q. Was it not Tom Haggerty?
A. I don't know his second name; he was little man, with black whiskers.
Q. You were there five or six days?
A. I think six days.
Q. On which side of the river is that?
A. On other—on right hand from here.
Q. You worked at what kind of work?

A. I helped on three days to build cabin, and three days to hang up some fish.

Q. Did you say they put you off the boat?

A. Yes, sir.

Q. Was that because you had no money?

A. They didn't put me off; I get off.

294 Q. They did not put you off?

A. No, they didn't, because I go myself. I been working my passage to come and we can't go no further—another boat come.

Q. You worked your passage?

A. To that place.

Q. Then you worked five days?

A. Then I come up here.

Q. How did you come; how did you get up the river?

A. Right along side river on telegraph line some time and some place along river.

Q. You came up the trail as best you could from twenty miles below Chena?

A. Yes, sir.

Q. That is right, is it—you came up the best you could?

A. Yes, sir.

Q. Either on the bank or on the telegraph line?

A. Yes, sir.

Q. How much of the telegraph line did you walk; what distance, do you know?

A. I can't tell; eight or ten miles.

Q. When you came into Chena how did you come?

A. I go over down about half mile.

Q. How did you come; did you come on the bank of the river or on the telegraph line?

A. The other side of the little slough into town.

Q. Back of the bluff along the river, along the side hill?

A. Yes, sir.

Q. Did you stop there a while?

A. I staid in town for about half hour there on street. I look around see if I know some men.

Q. You did not see any men that you know?

295 Q. What did you do after that?

A. I leave there about six o'clock—I could not tell.

Q. In the morning or evening?

A. Evening.

Q. Where did you go?

A. I go up to ferry station.

Q. Did you come up on the trail or on the river?

A. On trail.

Q. You walked, did you?

A. Yes.

Q. Was it dark then?

A. It was pretty dark about eight o'clock when I come to that place.

Q. It was a dark night?

A. Not very, just a little dark.
Q. It was not a very dark night?
A. It was little rain at that time.
Q. Did you come alone?
A. I come by myself.
Q. You inquired about the way, did you?
A. Yes, sir.
Q. Where did you go when you got there?
A. I find one man—I find man, he tell me I want to go across. I tell him it rain and I don't know how far it was from Fairbanks.
Q. You came up to the ferry?
A. Yes, sir.
Q. Do you mean the ferry near the farmhouse?
A. That the man that had the road house—I never understand his name.
296 Q. That is Mr. Hyde, that is the man that has a homestead there?
A. Yes; he was keep one woman this same man in same house—I don't know him by name.
Q. That was the first time you ever came up this river?
A. Yes; that first time.
Q. You came there and wanted to be ferried across the river?
A. Yes, sir.
Q. Did you come on up?
A. I ask him if I stay all night. I staid all night.
Q. When did you leave?
A. Five, six o'clock; I could not tell.
Q. Was it daylight?
A. It was daylight.
Q. Did you cross the river?
A. Yes, sir.
Q. You came on up?
A. Yes, sir.
Q. Then you stopped here for a time?
A. I don't know myself how long.
Q. Do you know what time it was—what time of the month you got here?
A. I don't know what day of month it was.
Q. What month was it?
A. I think it was in month of September; I think so.
Q. In the latter part of September?
A. I could not tell what part because that time I leave from Dawson, and I think it was some time last part September.
Q. Was the ice in the river—at that time had the river frozen?
A. No; at that time the river never was froze.
Q. No ice at all?
A. On some place big slough a little.
297 Q. The river itself was not frozen?
A. No.
Q. Where did you go when you first came to this town?
A. I go round here—I see couple my countrymen, and I ask him

for partner of mine—he have some stuff that belong to me on his name on baggage check—my baggage and my bag that was yesterday here.

Q. Who was your partner?

A. Haidukovich; he was partner of mine.

Q. That man that was on the witness stand yesterday?

A. On prosecution witness.

Q. You say that man that had to have an interpreter?

A. Peter Vidovich he talk for him.

Q. Your things were together?

A. Yes, sir.

Q. He had the checks?

A. He has his check on freight because he was paid ticket for Fairbanks; I did not buy ticket.

Q. You wanted to find him?

A. I tried to one day.

Q. You wanted to find him because he had your things?

A. I sell him to my partner, blankets last fall.

Q. When did you sell them?

A. After I get here.

Q. When you found him here did you get your blankets?

A. I don't know the blankets because I get money. I want to know what place where he live.

Q. That was what you wanted to see him for?

A. Yes, sir.

Q. Did you do any work after you came here?

A. I work two three days in Fairbanks restaurant. Some
298 day boss man want somebody to play cards.

Q. Then you did a little work for the saloon?

A. Yes; I could not get anything else.

Q. How long was it before you went down to Chena village with Stratton after you came here?

A. I could not say; I think it was October 20, 21; I could not say which.

Q. How long had you been here then?

A. In this country?

Q. At this town?

A. Before I arrested?

Q. Before you went down to Chena with Stratton?

A. I could not tell; I think I was month—month and half.

Q. Then you came here in the first part of September?

A. I think it was twentieth—something like that.

Q. Then it was something like three or four weeks?

A. I think more than four weeks.

Q. What did you say you went down there for?

A. I went first time down to Chena to see if boat come from outside. I went down for to see if I get any work.

Q. You left Fairbanks on the night of the 28th of October afterwards?

A. Yes, sir.

Q. And where was it you said you cross the river?

A. Eight, ten miles below Chena.
Q. You crossed the river eight or ten miles below Chena?
A. Yes, sir.
Q. How far did you travel on this side of the river before you crossed the river?
A. From here?
Q. Yes.
A. It must be eighteen miles.
Q. Call it ten miles to Chena, and eight miles below Chena you crossed the river?
A. Yes.
Q. What river did you cross?
A. Tanana River.
Q. How did you get over from the island upon which this town is located to the other side of the Tanana?
A. Where? I no understand.
Q. You say you went down the river before you crossed about eighteen miles. Did you keep on the same side of the river all the time?
A. Sometime in brush, sometimes near river, sometimes on river.
Q. You did not cross any river?
A. I cross one little slough this side Chena right by telegraph line; right by mouth Chena River.
Q. At the mouth of the Chena River?
A. Yes.
Q. Was that on the right-hand side of the Chena River?
A. Left hand from that.
Q. On the left-hand side you crossed a little slough?
A. Yes.
Q. Then you kept on down on the main line until you got eight miles below Chena?
A. The river some place freeze pretty solid, some place not freeze. I come right along and I see some place open, some place piled up, and I take long pole and brush and all time hit ice in front of me before I go, and one time when I get near side I stick my leg in one crack from two big pieces ice. I stick my foot in.
Q. You crossed on the ice, didn't you?
A. Yes.
Q. You crossed—you kept on this side—the left side?
A. Yes.
Q. You did not go through Chena at all?
A. No.
Q. You kept on this side of the river?
A. Right along.
Q. Then you crossed the Tanana River?
A. Yes, sir.
Q. On the ice, and got your feet wet?
A. Just one foot.
Q. What did you do when you got across the river?
A. I see two or three cabin.
Q. What did you do?

Q. I go right alongside the river two or three miles. I could not say how far.

Q. About two or three miles?

A. Yes.

Q. That would be twenty or twenty-one miles below Chena?

A. Far away.

Q. What time did you cross the river?

A. Some time in morning. It was not daylight yet.

Q. Do you know what time it got daylight then?

A. I do not.

Q. The nights were dark?

A. Pretty dark.

Q. And long?

A. Yes.

Q. It was some time in the morning?

301 A. I don't know. This place I stop it was not daytime yet.

Q. You made a fire?

A. I go to sleep.

Q. Was that outside or in a cabin?

A. In brush.

Q. You made a fire and laid down by it?

A. Yes, sir.

Q. You dried your feet before you laid down?

A. Before.

Q. Then you laid down and put your socks to dry?

A. Yes.

Q. You don't know how long you slept?

A. I don't know how long.

Q. Did you have any blankets?

A. No.

Q. Overcoat?

A. No.

Q. Did you have any coat?

A. No; just jumper.

Q. Did you have any underclothes?

A. I got underclothes.

Q. Did you have overalls?

A. I got two pair overalls.

Q. Did you have both pair on?

A. One pair in bag.

Q. What color were they?

A. The one that I had in bag was blue. The other was brown, the one I had on.

Q. Brown, the one you had on?

A. Yes.

302 Q. Did you have any pants besides the overalls?

A. No.

Q. You had underclothes?

A. Yes.

Q. Overalls and jumper?

A. Yes.

Q. What kind of shirt did you have?
A. I got sweater outside underwear.
Q. You had a sweater on over your undershirt?
A. Yes, sir.
Q. Then you laid down by the fire and went to sleep?
A. Yes, sir.
Q. Was it very cold?
A. No; I had good skin cap.
Q. You had that on?
A. Yes.
Q. When you woke up it was daylight?
A. Yes, sir.
Q. Was the sun up?
A. No sun at all.
Q. The sun did not shine?
A. No.
Q. You don't know what time it was?
A. No.
Q. Then what did you do?
A. When I was woke up the fire was pretty near out. I build up little more fire and go warm my arms, and I leave my bag and take rifle and two three shells and I go look for rabbit or bird.
Q. Did you find any?
303 A. I did not see any rabbit. I find telegraph line and somebody walk on snow four—six inches snow.
Q. Did you find any rabbits then?
A. I never look when I find that track.
Q. After you found that track there, did you look?
A. I was looking for rabbit to get something to eat; want to get something to eat, because I got no money with me.
Q. You had no money?
A. No.
Q. You wanted to get a rabbit—something to eat—and then when you saw the tracks you quit looking for rabbits?
A. When I see track I want go some place and get something to eat.
Q. You did not know whose tracks they were?
A. No; I did not.
Q. You did not know whether they had eaten their breakfast or not?
A. No.
Q. What did you do?
A. I went back after my bag.
Q. Did you have any bread with you?
A. No.
Q. You did not have anything to eat?
A. No.
Q. Then you started on the trail again?
A. Yes, sir.
Q. How far away did you go from your bag?
A. When I left?

Q. When you went out rabbit hunting.
A. Ten fifteen yards.
Q. Then you went back to your fire?
A. Yes.
304 Q. And got the bag?
A. Yes, sir.
Q. Then you went on the trail again?
A. Yes, sir.
Q. Who was the first party you saw, if you saw anybody?
A. I walk from that place about, I don't know how many miles, six, eight miles, I walk all time on trail on that track.
Q. Did you walk fast?
A. Fast as I could.
Q. Where did you see anybody?
A. When I come to fire way down on the trail, I see fire on the road, I don't see anybody alongside.
Q. You saw a fire, but nobody by it?
A. Nobody.
Q. Did you see anything about that fire?
A. I see that sheet with some things in it and that brown gunny sack.
Q. The sheet rolled up like this?
A. Yes.
Q. And nobody in sight?
A. No, sir.
Q. Anything else there?
A. Near stump and piece of meat on stump, I don't know what kind it was.
Q. A piece of meat on the stump?
A. Yes, sir.
Q. On the trail?
A. About like near to these books.
Q. Was that fresh meat?
A. Yes, sir.
Q. Was it frozen—or did you say?
305 A. I don't think it was, I don't know.
Q. You don't think it was frozen?
A. No; because the fire right along side the stump.
Q. You think it had thawed out by the fire?
A. I don't know, it looked no froze.
Q. What time of the day was that?
A. I don't know.
Q. Did you tell the marshal that it was about eleven o'clock?
A. I think it might be that.
Q. I asked you if you told him it was about eleven o'clock?
A. I did.
Q. Was it about eleven o'clock?
A. Yes, sir.
Q. That was the first man that you saw after you arrived. You say you found those things that you described; did you see anybody after that?

A. That was about eleven o'clock; I stay there about fifteen minutes alongside the fire and I look and I see a man come alongside river in the brush and look on me.

Q. How far away did you see him first?

A. Ten, fifteen yards.

Q. He was then on the river bank, down on the bank next to the water and ice?

A. Yes.

Q. How far back was this fire?

A. Ten, fifteen yards, I could not say how far.

Q. About how far do you think it was?

A. Ten, fifteen, twenty yards.

Q. What do you think?

A. I think about twenty yards.

306 Q. Was that on or near the trail?

A. Right on telegraph line.

Q. You saw a man coming along by the water?

A. Yes, sir.

Q. You saw him from where the fire was?

A. I was sitting by the fire.

Q. Did you go out to meet him?

A. He came to me.

Q. What were you doing—were you siting down or standing up?

A. Sitting down.

Q. How old a man was he?

A. Twenty-five, may be more than that, I could not tell.

Q. A little mustache just starting?

A. Yes, sir.

Q. You think he might be twenty-five or twenty-six?

A. Twenty-six, twenty-five; I don't know.

Q. What color hair did he have?

A. He have very light hair.

Q. What color mustach'?

A. Just starting—little mustach'.

Q. You think his mustach' was light?

A. Yes.

Q. How long was he there before the other man came up?

A. Ten, fifteen, twenty minutes.

Q. You had been there fifteen minutes before the first man came?

A. Before first man came ten, fiften minutes.

Q. You had been there fifteen minutes and then you had been there ten or fifteen minutes after that before the first man came?

307 A. Yes, sir.

Q. Where did you see the other men first?

A. He came same place as other fellow.

Q. Did he come from the same direction?

A. He did not come he don't look on me—he go right there.

Q. He what?

A. He did not look on me—he come right up alongside fire like first one.

Q. The other fellow came up slow and looked at you?

A. Yes, sir.
Q. Did he look at you?
A. He look for two, three second and walk slow.
Q. The last one did not look at you, just walked up?
A. Yes.
Q. Did he say anything to you about whose fire it was?
A. He said it was his fire.
Q. What did he say?
A. He ask me good morning.
Q. What did he say about the fire?
A. I did not ask anything about the fire.
Q. Did he say anything about the fire?
A. No, sir.
Q. Did he ask you where you were from?
A. Where I was from and where I go.
Q. Did you ask him where he was going?
A. I don't remember what you call—I ask what place he go and he say he going to Valdez.
Q. Did you ever hear of Valdez before?
A. No.
Q. You did not know what direction that was?
308 A. I never heard anything; I never was there.
Q. You never was there and never heard of it?
A. No.
Q. Didn't you hear anything of Valdez when you were in Douglas?
A. Yes.
Q. You are sure that he said that it was Valdez?
A. Something like that.
Q. You think it was something like Valdez?
A. Yes. I hear lots of men that kind place call.
Q. Now, these men had gone the same way you did?
A. Up to that time; after that I don't know.
Q. You thought they had gone the same way you had?
A. I think so; in snow I find tracks.
Q. You thought they were going the same way you were?
A. Yes.
Q. You thought that was the way they were going.
A. Yes, sir.
Q. Did you follow that track until you got to them?
A. Yes, sir.
Q. You thought sure they were the men that made the tracks?
A. I follow to fire the track; I think they are same.
Q. Did the tracks go any further than the fire?
A. Fire—no road right there.
Q. These two men had stopped there who made this road?
A. I think that, because I see them two men and nobody else.
Q. You found these men, and you thought they had made the tracks?
A. Yes, sir.
Q. Did you tell them that you had been on their tracks?
A. Yes, sir.

Q. Did you tell them that?

309 A. Yes, sir.

Q. Where did you say that to them?

A. Yes, sir.

Q. When did you say that; when you first saw them?

A. I told him—the first man—I saw these tracks, and I go up to this fire; I tell him that. He says how far you find tracks? I said eight, nine miles up.

Q. Did they make any answer to that?

A. No.

Q. Did not tell you where they were from?

A. No, sir.

Q. They told you that they were going to Valdez, though?

A. They told me how far.

Q. How far did they say?

A. I said that.

Q. They asked you how far it was to Valdez?

A. He ask me how far that place to Valdez.

Q. They told you where they were going, and you told them where you were going?

A. Yes, sir.

Q. You did not know that was the opposite direction from Valdez; that they would have to go up the river, if they were going to Valdez, and not down?

A. No, sir.

Q. How long were you there altogether; you had been there ten or fifteen minutes before the first man came and fifteen minutes after that before the other man came?

A. I think an hour—an hour and a quarter.

Q. Do you think you were there an hour?

A. An hour, an hour and a quarter; I could not say.

310 Q. Did you have any further talk with them other than what you have already told?

A. Yes; I asked them for breakfast.

Q. And they let you have breakfast?

A. I ask them——

Q. They let you have breakfast?

Mr. TOZIER. I think the witness should be allowed to explain.

COURT. I think he can explain. Let him answer the question, and then he can explain afterwards.

Q. They let you have breakfast?

A. He did not let me have breakfast; I ask him I want to buy meat, and first time he say he has not got enough for himself, and I tell him I could buy.

Q. Did you tell this man that before the other man came?

A. Yes sir.

Q. You told him that you would pay for breakfast?

A. I told him I have no money, but I have nugget chain.

Q. You had no money, you had no chain?

A. I had nuggets for chain.

Q. But you did not have any nugget chain?
A. I did not know; at that time I no speak English.
Q. You did not have any nugget chain?
A. No, sir.
Q. You told them you had a nugget chain?
A. Yes, sir.
Q. You knew that was not so?
A. I did not know that time about gold; I know nugget, but I no know gold at that time.

Q. You did not know that there was a difference between
311 nuggets generally and nugget chains?
A. I could tell different now.

Q. These nuggets are used for money—used as money by miners?
A. Some place—somebody—somebody no.
Q. You learned about gold dust and talked about gold dust in Dawson, didn't you?
A. Yes, sir.
Q. You would have called it gold dust if you had known it then?
A. Yes; I call it gold dust and nugget, and I call little pieces gold gold dust.
Q. You understand now that they call it all gold dust?
A. I know different now.
Q. It is called gold dust generally?
A. I understand now.
Q. You knew that it was used as money—you knew that merchants took that for money?
A. Lots places they no take it.
Q. You know that merchants take it generally in this country for money?
A. Yes, sir.
Q. You knew that was true in the Dawson country?
A. Yes, sir.
Q. Did you find that out in Dawson?
A. I knew that gold was good in any old place in old country.
Q. Were you a miner in the old country?
A. No; I was cowboy.
Q. You did not work in the mines there?
A. No, sir; I work on farm.
Q. Your first experience as a miner was on Douglas Island?
A. Yes, sir.

312 Q. You told them you did not have any money, but you had a nugget chain?
A. Yes, sir.
Q. Did you show them to him?
A. I tell him look, and I take from my pocket one nugget, and he want to see and buy all from me.
Q. Did he tell you that it was not a nugget?
A. He tell me it was dust—I could not understand—he said something like that I could not understand.
Q. You remember now that he told you that it was dust?
A. Yes, sir.

Q. He wanted to get all of it?
A. Yes, sir.
Q. What was the first thing he said?
A. He said, "I want all." I said—I told him I have no measure to tell how much.
Q. Did he say he wanted to buy it?
A. He did not say that—he said he get along without measure. He said "I give you watch change with you that."
Q. Change you the watch for the nuggets?
A. Yes, sir.
Q. Had he shown you the watch?
A. I did not take any.
Q. Had he shown you the watch?
A. Not at that time.
Q. Did he tell you where he got the watch?
A. He did not tell me.
Q. Did he tell you where he bought the watch?
A. No, sir.
Q. Where did you get the watch?
A. He said no could trade me that——
313 Q. Said what?
A. I could sell them without money—that I could trade without money for watch.
Q. That you could trade without money?
A. I could trade.
Q. Did you tell him you wanted money for the nuggets?
A. Yes, sir.
Q. Did you try to get money for the nuggets?
A. Try to get money here?
Q. Here or any place?
A. No place before that.
Q. No place?
A. I sold one little piece dollar six bits in Chena.
Q. When did you do that?
A. That was seven, eight days before I got out. Same time I work on freight down there.
Q. You sold one for a dollar and six bits?
A. Yes, sir.
Q. To whom did you sell it?
A. N. A. T. or N. C.—one of the company stores.
Q. That is all you sold while you was there?
A. Yes, sir.
Q. Did you sell it for money?
A. I got dollar and half and two bits tobacco.
Q. You showed him that nugget and he wanted to buy all you had?
A. Yes, sir.
Q. Did you show them all to him then?
A. I took one out first. little one, and give him for dinner.
Q. Did you get it back?
A. I tried to get it, but he keep it.

Q. Did you give him that nugget for dinner?
314 A. I did not give him—I afterward give him all.
Q. Did you eat dinner with them?
A. I had dinner; he gave me little chunk ham, and I leave with ham in my hand.
Q. You say he gave you some bread?
A. Pretty near whole loaf miner bread and little chunk ham.
Q. Was that ham?
A. It was bone——
Q. Was that ham?
A. Yes, sir.
Q. Where did he get it?
A. He took it from his bag.
Q. From the same bag?
A. Yes, sir.
Q. Was it canned ham?
A. No, sir; little chunk of ham and bone.
Q. A little piece of ham with the bone in it?
A. Yes, sir.
Q. Was it cooked?
A. No, sir.
Q. Did they cook it?
A. No, sir.
Q. Did you say it was cooked or not cooked?
A. Yes; cooked.
Q. Whose bread was that?
A. Mine.
Q. Where did you get it?
A. From the same fellow that give me chunk of ham.
Q. He gave you the bread and the ham, both?
315 A. Yes, sir.
Q. Did he give you any tea or coffee?
A. Nothing of that kind that I saw.
Q. They did not have anything to drink that you saw of that kind?
A. No, sir.
Q. Did you eat it in your hand?
A. I took little piece of bread and cut it with my knife, and little piece of ham and little piece of bread, and I put rest in my bag, and I start down the trail.
Q. Did they have anything to cook with; a frying pan—anything like that?
A. I did not see anything of that kind.
Q. Did you take some of the grub with you?
A. Yes, sir.
Q. What did you have?
A. I took little chunk ham; I thought it was no good—the bone and little meat and skin on it—and this miner bread—half loaf miner bread left.
Q. You took a little piece of ham and a half loaf of miner's bread?
A. A little piece I took and half loaf of bread left.
Q. There was that much left?

A. Yes, sir.
Q. You put that in your bag?
A. Yes, sir.
Q. And some ham?
A. Yes, sir.
Q. Anything else?
A. All this stuff that I get.
316 Q. Did you get anything else to eat?
A. Nothing else to eat.
Q. How did you eat it?
A. The first thing I eat—the first thing he give me was that size piece [indicating].
Q. Did you have any more talk with these men after you traded?
A. Nothing at all.
Q. You did not look to see what you got?
A. I did not look at that time; I look on this brown coat and overcoat and vest.
Q. The brown corduroy coat and vest and overcoat?
A. Yes, sir.
Q. Did you try them on there?
A. Yes, sir.
Q. Did you try them on before you traded?
A. Yes, sir.
Q. Did the coat fit you pretty well?
A. The coat was pretty tight.
Q. You put it on over your sweater?
A. Yes, sir.
Q. It was pretty tight over the arms?
A. Yes, sir.
Q. The vest buttoned around you?
A. Yes, sir.
Q. You saw the watch, you said?
A. Yes, sir.
Q. Where was the watch when you first saw it?
A. I don't know—I could not say—he got it under his coat, but I don't know what pocket—from inside.
Q. Was that fish cord on it for a chain when you got it?
A. Yes, sir.
317 Q. Was that key on it when you got it?
A. No, sir.
Q. Where did you get it?
A. I get it from same man I work for.
Q. Did you get it from him?
A. Yes, sir; from his cabin.
Q. Did he give it to you?
A. I don't know; I was working for him, and I stopped with him, and in the morning when I leave and go I get about mile and half I feel something in my pocket and I feel in my pocket and I pull out key like that same kind.
Q. You don't know whether that is the same key or not?
A. I don't know—that looks like one same kind like that.

Q. What did you do with the watch when you got it?
A. I keep it for myself, put it in my pocket to keep it.
Q. Did you look at it to see what time it was?
A. I look half mile down.
Q. Did you look at it to see what kind of a watch it was?
A. I look on that.
Q. Did you look to see how fine it was?
A. I did not look; I look to try to see if it gold or something else, because I know that gold.
Q. You looked to see how many carets fine it was?
A. Fourteen-caret gold.
Q. He did not tell you?
A. I could see that; he told me himself—I open to see.
Q. You understood by looking at it that it was fourteen-caret fine?
A. Yes, sir.
318 Q. You did not see what time it was?
A. I think that time it was about eleven three-quarter hours.
Q. Nearly twelve o'clock?
A. Yes, sir.
Q. That was when you looked at it?
A. Yes, sir.
Q. You examined the coat and vest and tried them on?
A. Yes, sir.
Q. You looked at the watch to see what kind of a watch it was?
A. Yes, sir.
Q. What else?
A. I look at clothes.
Q. Was there anything else that you did at that time?
A. I say everything; I try on vest.
Q. The coat and vest, you say, and overcoat?
A. Yes, sir.
Q. You tried on the overcoat, too?
A. Yes, sir; I tried it right on over coat.
Q. Did it fit you?
A. It didn't; small like here.
Q. Not so small as the other?
A. No.
Q. You could wear it all right, could you?
A. Yes, sir.
Q. You were wearing a sweater?
A. Yes, sir.
Q. That was just over an undershirt?
A. Yes, sir.
Q. Where did you get that sweater?
A. In Douglas Island.
319 Q. You have had it ever since?
A. Yes.
Q. What color was it?
A. Kind of red and black stripe across.
Q. What became of that?
A. When I get this there—it be two years old—it pretty broke—I threw it away and take another.

Q. Where did you throw it away?
A. Below these men five, six miles.
Q. You threw away your old sweater and put on the sweater you found in this bag?
A. Yes, sir.
Q. Is that the sweater you have been wearing all the time here?
A. Yes, sir.
Q. You had it about a year?
A. About year ago last Christmas.
Q. It would be a year in Christmas?
A. I can't say; ten, fifteen days before last Christmas.
Q. Was that a pretty good sweater?
A. She was old; she was cheap sweater for dollar and half in Douglas.
Q. Was it worn out any?
A. She was pretty worn.
Q. Was there any holes in it?
A. Same place on the elbow.
Q. You mean in the sleeve?
A. Yes, sir.
Q. This was an old sweater?
A. It was old, but better than mine.
Q. Some holes in it?
320 A. Not at that time.
Q. You have worn this there yourself?
A. Which one?
Q. You bought it for yourself and had worn it for yourself?
A. Yes, sir.
Q. Nobody else had worn it?
A. Nobody had worn it.
Q. So you threw it away and put on this old sweater, did you?
A. I make it good trade; I think the old one good.
Q. You changed the sweater that you had bought for yourself and worn up to that time and put on this old sweater that you found in this bag?
A. Yes, sir.
Q. Did you notice that that sweater had holes in it when you put it on?
A. Not that I could see.
Q. What color did you say it was?
A. Blue sweater.
Q. Do you know this sweater? Exhibit No. 13. Is that the one you put on?
A. I don't know this sweater. [Witness examines sweater.] I think that was same sweater.
Q. How long did you wear it?
A. Four, five days.
Q. You did not look in that bundle of things which you described as being wrapped in that white sheet? You did not examine those things until you got down the river a ways?
A. Not till I get five, six miles down.

Q. You did not examine them at all before you made the trade?

A. No.

321 Q. How much money did you have?

A. I got no money.

Q. How many dollars in gold dust—in nuggets?

A. I never see; pretty near seventy-five, eight dollars.

Q. How many dollars worth of nuggets did you sell?

A. Sometimes sell him five dollars, three dollars, two; I have ten dollars, twenty dollars—I no guess.

Q. You picked these up last summer?

A. Yes, sir.

Q. Three dollars and five dollars and twenty dollars?

A. I never sell him that much, twenty dollars, but I sell him last time eighteen dollars one time.

Q. Where was that?

A. In Dawson.

Q. All the money you spent you paid out when in Dawson?

A. I give it to my partner; I give eighteen dollars for coat for myself.

Q. All the gold dust you paid out anywhere you paid out what you called dust?

A. Yes.

Q. You had these gold nuggets in Dawson?

A. I get them there.

Q. You said you paid out three dollars at one time?

A. I say I sell sometime five dollars, sometimes two dollars, and one time eighteen dollars in Dawson.

Q. Do you remember what you got when you sold that gold dust?

A. I get money.

Q. You say you sold for money?

A. Yes, sir.

Q. Then you traded on for a dollar and six bits in Chena?

322 Q. How many nuggets did you have when you traded?

A. I think twenty-two nuggets.

Q. You had twenty-two nuggets altogether?

A. Yes.

Q. Did you tell Dreibelbis how many you put in this chain which you described; did you tell him how many there was?

A. I tell him when he ask me what kind it was; next time he show me another chain and ask me, and I never told him how many nuggets in another chain. I tell him same thing, but no tie one to another.

Q. I asked you if you remember if you told the marshal how many nuggets you traded for this stuff.

A. I don't remember how many I told him.

Q. Do you remember how many?

A. He asked me if my partner knew, and I told him exactly how many nuggets in chain.

Q. He asked you—he did not ask you about your partnership chain when he asked you how many nuggets were in it?

A. When he ask me first time I think he ask—I could not say—I think he talk about this chain.

Q. You told the deputy marshal that you had traded a nugget chain for this watch and these other things, did you not?

A. Yes, sir.

Q. And he afterwards asked you how many nuggets there were in the chain that you traded for the watch and other things?

A. He did not ask me; the first thing he asked me, what I buy for, and I tell him nugget chain. He ask me, "Where you get it?" I tell him when I work, me and my partner together in Dawson.

Q. You told him who made the chain?

A. He told me who made chain. I told him man in Dawson. I——

323 Q. Did you tell him the chain was made in Dawson; that you traded for the watch and other things?

A. No, sir.

Q. Did you not tell him that one Frenchman made it; that you thought his name was Philip—that he made the chain?

A. Yes, sir.

Q. Didn't you tell him that a Frenchman had made the chain?

A. Yes; Philips.

Q. Which you traded for this watch and other things?

A. No, sir.

Q. Didn't you explain to him how that nugget chain was made?

A. I think I tell him.

Q. Now, I mean the one you traded.

A. I never spoke of that kind of chain; it was another chain.

Q. You described the chain you traded for this stuff?

A. Yes, sir.

Q. Didn't you describe that kind of a chain?

A. No, sir; I told him another chain.

Q. Didn't you tell him it had fifteen nuggets in it—in the main chain?

A. I think I tell him ten, fifteen, and five in cross piece.

Q. Was that the chain you were describing?

A. I think that is the one, or they exactly like one another.

Q. You told him there was a certain number in the main chain and a certain number in the cross bar. Were you talking about the watch chain that you had traded?

A. No, sir.

Q. How did you come to tell him about that chain?

A. I tell him where I get the chain, and I tell him I get it same time I work with partner, same time we build chain
324 together, and he tell me what kind chain I build with my partner.

Q. You did not tell him that that was the chain you traded for the watch and other things?

A. No, sir.

Q. Did you tell him that the one you traded for the watch and clothes had a quartz nugget near the center?

A. No, sir; for the watch I give——
Q. You did not tell him that?
A. No, sir; I never tell him that.
Q. You say now that you did not think he meant this chain?
A. No, sir.
Q. Mr. Dreibelbis and Mr. Wickersham were together?
A. Mr. Wickersham he said——
Q. I ask you now if they were together when they asked you about that chain?
A. Mr. Dreibelbis, he talk and the other man he say he——
Q. I asked you if they were together when they talked to you about it?
A. Yes, sir.
Q. Did you describe the chain to them and tell them how many nuggets were in the main chain?
A. I ask them for a——
Q. You understand the question. I asked you if when they wanted you to describe the chain that you said you traded for the watch and clothes, if they asked you to describe that and you did describe it?
A. No, sir; I never did describe it.
Q. You did not describe it, you say?
A. No, sir.
325 Q. You did not tell them about it?
A. I told him about it.
Q. You did not describe the chain which you traded for the clothes and the watch?
A. No, sir; I never talk about that chain; I think it was about another chain.
Q. Why were they talking to you about that?
A. I think they try to bother me about another chain.
Q. Did you take a sheet of paper and draw one of the larger nuggets—the best outline you could to show them the kind of charm the nugget chain had on it?
A. Yes, sir; I did.
Q. You were not describing this chain that was put in evidence—you were not telling them about the chain you traded for the clothes and the watch?
A. I never told them I trade the one I draw picture.
Q. You were talking about the other one that you had in your mind?
A. Yes, sir.
Q. After they had talked to you about the chain—th nugget chain—then they did bring in this chain and show it to you—the one that is in evidence?
A. Not at that time; I can't say how far.
Q. They did some time after that?
A. Yes, sir.
Q. Do you remember when they did that?
A. Yes, sir.
Q. You told them that was not the one?
A. I told them that was not the chain which I traded.

Q. For the watch and other things?
326 A. Yes, sir.
Q. Did you then get mad at them?
A. Not at that time; I get mad another time when he get man who want to speak for me.
Q. Did you get mad?
A. I get a little mad.
Q. You said they were trying to trick you?
A. Yes, sir.
Q. Is that so?
A. Yes, sir.
Q. Then you would not tell them anything more about it?
A. I tell them get a man and I would talk. I no speak good English then.
Q. You have said that a good many times that you were not able to understand very well. Did you tell Mr. Dreibelbis where you got the underclothes?
A. Yes, sir; I tell him—I tell you yesterday here.
Q. Yesterday?
A. Yes, sir.
Q. Did you tell Marshal Dreibelbis after he arrested you at some time about this underclothes—you had a shirt and two pair of drawers?
A. No, sir.
Q. What did you have on—you had some of this heavy underclothes?
A. Not before I was arrested.
Q. When the marshal arrested you, you had some on?
A. Yes, sir.
Q. How much did you have on?
A. I think two shirts and one pair drawers.
Q. All this heavy underwear that has been here before the court?
327 A. Yes, sir.
Q. That you got it in the sack?
A. Yes, sir.
Q. Did you tell the marshal where you got it?
A. No, sir.
Q. Is it not a fact that you told him that you got this suit in Dawson?
A. I tell him I get pair pants.
Q. I am asking you about the underwear now. Didn't you tell Marshal Dreibelbis that you got these two suits of underclothes—this heavy suit—that you got them in Dawson?
A. No, sir.
Q. You did not?
A. No, sir.
Q. Did you tell Lodge—you were at Lodge's place; you know Lodge and his partner?
A. I work for them.
Q. Did you work for them?

A. Yes, sir.
Q. That is where you cut wood?
A. Yes, sir.
Q. That is where you repaired a cabin for a road house?
A. Yes, sir.
Q. How close was that to Lodge's place?
A. Lodge's cabin to——
Q. To the one you repaired for a road house, I mean—the one you repaired for Dick Hearn?
A. I could say twenty-five, thirty yards.
Q. I am asking you now how far it was from Lodge's cabin to the cabin you repaired for Dick Hearn?
A. I don't know that.
328 Q. I mean the last cabin you stopped at; the cabin where you worked—that is the fartherest house down?
A. On this side.
Q. That is the furtherest place down you stopped?
A. It was eight, ten miles.
Q. How far on this side was that?
A. Fifty, hundred yards.
Q. You stopped at Lodge's and worked four or five days?
A. Three days.
Q. And while you were there you fixed the other cabin?
A. For one forenoon.
Q. And then you fixed the cabin?
A. Yes, sir.
Q. That was for Dick Hearn?
A. Yes, sir.
Q. How much did you do?
A. I do one day forenoon.
Q. One day in the forenoon?
A. One day before noon—four, five hours.
Q. That is all the work you did on the cabin?
A. Yes, sir.
Q. Did you talk to Lodge about the suit of clothes you had?
A. I did.
Q. Which suit did you talk about?
A. The black suit, which was here.
Q. Did you tell him where you got it?
A. I tell him—he ask how much—I tell him I did not buy him myself, I get him from my brother.
Q. Where did you tell him your brother lived?
329 A. From my brother in Dawson.
Q. That it was too small and you wanted to sell it?
A. No, sir.
Q. That was not the truth—you did not get it from your brother?
A. No, sir.
Q. You got it out of that bag?
A. Yes, sir.
Q. You had a ring on your finger, didn't you?
A. Yes, sir.

Q. You had that when you were at Lodge's?
A. I get it; when I start to work for him I put it in poke.
Q. In this poke?
A. Yes, sir.
Q. While you worked?
A. For three days.
Q. Where did you first put it on?
A. Just when I come this same place—I pass Dick's cabin.
Q. After you left Dick's cabin?
A. Yes, sir.
Q. You did not put it on before you got to Dick's?
A. No, sir.
Q. Where did you find it?
A. I find it in black suit clothes in black vest.
Q. You put it on after you left Dick's cabin and before you got to Lodge's?
A. Yes, sir.
Q. You wore it after that?
A. I wear it until I get to Lodge's.
Q. Then you took it off and put it in the poke?
330 A. Yes, sir.
Q. Where did you put it on?
A. Put him on after I leave Dick's.
Q. Where did you keep it before that?
A. In coat pocket.
Q. Did you put it in the bundle again?
A. No.
Q. Where did you keep it?
A. In coat pocket.
Q. After you got through work you put it on?
A. Yes, sir.
Q. When you got through work you put it on?
A. Some time after finish job—three four days.
Q. Then you put it on?
A. Yes, sir.
Q. Did you wear it back to Kane's?
A. Yes, sir.
Q. You wore it back when you started up the river again; you had it on?
A. Yes, sir.
Q. You wore it up to Kane's; that was the next stopping place above?
A. I don't know what his name; he had camp up river.
Q. That was eight or ten miles up the river?
A. Yes, sir.
Q. Did you stay all night there and eat breakfast?
A. Yes, sir.
Q. Will you describe that ring to the jury; tell them what it was like?
331 A. It was small ring; I hardly get it on small finger.
Q. You could get it on your small finger?

A. It was Yukon ring on it.
Q. What was that?
A. It was Yukon ring on it.
Q. It had some letters on it?
A. I see some letter; they tell me Yukon ring.
Q. Where were the letters you say; were there any letters engraved, cut in the gold?
A. Little like nugget make letters.
Q. Were there any letters on the inside of it?
A. I did not take notice.
Q. Did you have it on when you left Kane's.
A. I had it in my overalls.
Q. You had it in your pocket?
A. I put it in overalls pocket when I go to sleep.
Q. You put it in your overalls pocket that night when you went to bed and did not think of it again?
A. I did not look; I don't look for it; the marshal I think he take it ring and everything.
Q. It was not in your pocket when he searched you?
A. I don't know; I did not see him take it.
Q. You never saw it after you went to bed that night at Kane's?
A. No, sir.
Q. Did you tell the marshal that you had a ring?
A. No, sir.
Q. Did you tell him that you did not have one?
A. No, sir.
Q. Didn't he ask you if you found a ring?
332 A. He did not ask me that time.
Q. Did he ask you after that?
A. Afterward—about fifteen days.
Q. Did he ask you if there was a ring among that stuff?
A. He ask me if I have ring—him and Mr. Wickersham.
Q. Didn't they ask you if there was not a ring among those things?
A. He ask me if I got any ring.
Q. What did you say?
A. I said, "I got no ring."
Q. Did you tell them you had had a ring?
A. No.
Q. That you had had a ring and lost it?
A. No, sir.
Q. Did you tell them that you had lost a ring?
A. He tell me, "What you do with ring?" I tell him I got no ring.
Q. You did not tell them that you did find one, but had lost it?
A. No.
Q. You told Kane where you got the ring?
A. I told him that I buy for eight dollars.
Q. You told him you bought it in Dawson and paid eight dollars for it?
A. Yes, sir.
Q. Didn't he tell you that you got it cheap?

A. Yes, sir.
Q. That it was a valuable ring?
A. That it was good ring.
Q. That was not so—that you got it at Dawson?
A. No, sir.
333 Q. You did not offer to sell it to them?
A. He tried to buy, but I no want to sell.
Q. Did he offer you anything for it?
A. He did not offer—he said, "You want sell it?" and I said, "No."
Q. You just told him you did not want to sell it?
A. Yes, sir.
Q. Why did you tell him that you got it in Dawson?
A. Because if he—if I tell I get it with stuff, I think he won't believe it and maybe think I steal it.
Q. You were afraid he might think that you stole it?
A. Yes.
Q. So you told him you got it in Dawson?
A. Yes, sir.
Q. Did you have lunch with you when you got to Hearn's—when you got to Dick Hearn's place?
A. I eat lunch on way.
Q. You ate the ham and loaf of bread that you got from those fellows on the trail?
A. Yes, sir.
Q. Did you think to notice which way those men on the trail went?
A. Which men?
Q. The men you traded with. When you got through trading, you started on—what did they do?
A. They stop right on and start to cut piece of meat that was on stump.
Q. They started to cut it up when you left?
A. He started to cut for himself.
Q. When you left there that is what they were doing?
A. Yes; the last thing I saw.
Q. You did not see them any more—the next day?
334 A. I see——
Q. You did not see these men any more?
A. No.
Q. They did not go down the river that you know of?
A. No, sir.
Q. They did not pass you?
A. No, sir.
Q. Nobody staid all night at the cabin the first night with you?
A. Two men.
Q. Do you know their names?
A. No, sir.
Q. You mean at Dick Hearn's the first night?
A. Yes, sir.
Q. Do you know where they came from?
A. No, sir.

Q. They were not the men you traded with?
A. No, sir.
Q. Did he tell you where he got those things?
A. No, sir.
Q. Didn't tell you why they wanted to sell them?
A. No, sir.
Q. Did not tell you why they wanted the gold?
A. No say that I can remember.
Q. Not that you remember?
A. No, sir.
Q. They did not tell you what was in the bag?
A. He tell me some clothes.
Q. You asked what was in it?
A. I did not ask what it was; I ask if there was clothes.
Q. He said there was clothes?
335 A. I said to him that was clothes.
Q. You did not open it to look at it?
A. No, sir.
Q. You did not know what was in it?
A. I did not know, because I was glad to get anything.
Q. You did not know what was in the bag when you got it?
A. Yes, sir.
Q. When?
A. At this cabin where I stop.
Q. You did not understand what I asked you. I asked you if you knew what was in that bag when you got it?
A. You mean when I traded?
Q. Yes.
A. I never know at that time; I know other clothes.
Q. You knew you were getting the watch and overcoat and coat and vest?
A. Yes, sir.
Q. You did not know what else you were getting?
A. No.
Q. You did not know what else you were getting?
A. No, sir.
Q. You did not know anything about it?
A. I saw something not very heavy, but I don't know what was in it.
Q. You did not know whether it was clothes, bed clothes, or blankets?
A. No, sir.
Q. About five miles below that you opened it?
A. Yes, sir.
336 Q. Where was you when you opened it?
A. In cabin.
Q. There was a cabin there?
A. Yes, sir.
Q. You had the watch with you?
A. Yes, sir.
Q. What time did you stop at that cabin?

A. About two; may be half after two.
Q. You don't remember what time?
A. No, sir.
Q. You went in there and made a fire?
A. Yes, sir.
Q. There was a stove there?
A. Yes, sir.
Q. You examined to see what you had?
A. Yes, sir.
Q. You found all these things that have been exhibited here?
A. I no remember all same kind of stuff.
Q. You found the razor and sheet and letter paper and all these things?
A. Same kind things; some nails, stick wood.
Q. Were they small nails or large nails?
A. Small nails.
Q. And when you opened up the bag to examine it you found them?
A. Yes; some small nails.
Q. You did not know these men that you traded with?
A. Never saw them before.
Q. You did not know either of their names?
A. No, sir.

Q. Did you tell anybody where you got that lunch you ate?
337 A. I told Dick.
Q. What did you tell him?

A. If I tell him I was walking all night, I don't think he want to give me anything to eat, and I told him I sleep all night. I tell him I stop with two men by name Tom and Henry. I know first name, but I don't know second name.
Q. You told him that you stopped overnight with Tom and Henry, but you don't know the other name?
A. Yes, sir.
Q. You did not stop overnight with them?
A. No, sir.
Q. That was not true?
A. No, sir.
Q. What did you tell him that for if it was not true?
A. I scared he might think something wrong with me and tell me get out.
Q. So you told him that you stopped all night with Tom and Henry so that he would think it was all right?
A. Yes, sir.
Q. You did not know anything else, only that it was Tom and Henry?
A. Yes, sir.
Q. Didn't you tell him it was Tom Haggerty?
A. Tom, a Scotchman.
Q. That was the man you stopped and worked for?
A. Yes, sir.

Q. So you gave him to understand that it was a Scotchman that you stopped with that night?

A. I told him I know it was Scotchman.

Mr. TOZIER. I did not understand his answer.

A. I never know anything about him. I told him Scotchman.

338 Q. Well, you did not know that he was a Scotchman?

A. I tell him he was Scotchman.

Q. You told Hearn that you got it from Tom, did you?

A. What?

Q. Your lunch—that ham and bread?

A. I told him.

Q. Did you mean to have him understand that you meant Tom Haggerty? Did you mean him to believe that he was the man you got it from—the man you worked for?

A. Yes.

Q. You did not mean to tell him that you got it from the two men you met on the trail?

A. I didn't tell him that.

Q. You did not tell him about the trade you had made?

A. No, sir.

Q. You did not tell him that you traded of a nugget chain and that you got all that stuff and clothes and this big bundle?

A. Never ask me before Mr. Tozier ask me.

Q. Who did you tell—the first man you told?

A. I never told anybody.

Q. You told the marshal that you traded the chain?

A. In court.

Q. After you came to the court-house?

A. Yes, sir.

Q. That was here at the court-house in his office?

A. Yes, sir.

Q. He was the first person you ever told about that trade?

A. Yes, sir.

Q. You did not talk to these men where you stopped about it?

A. No, sir.

339 Q. You told everyone you asked that you got it some place?

A. Yes; if they ask for nothing I never tell anything.

Q. You told them you got the watch in a raffle?

A. Yes, sir.

Q. You told them that you got the suit of clothes from your brother in Dawson?

A. Yes, sir.

Q. Did you tell anyone where you got the underclothes?

A. No, sir.

Q. You told them that you got the ring in Dawson?

A. Yes, sir.

Q. You did not tell the truth about anything?

A. No.

Q. Why didn't you?

A. If I tell them I buy them on trail I scared they think I get him too cheap—I scared they think I steal him some place.
Q. You thought they would not believe your story?
A. Yes.
Q. Can you tell us again what time it was when you left Fairbanks on the evening of the 28th of October?
A. I can't say sure; I believe something—maybe eight, nine o'clock. I could not prove for sure—after half past seven.
Q. You could not say for sure, only it was after half past seven?
A. Yes; eight, nine o'clock.
Q. You said before, when Mr. Tozier examined you, that you thought it was eight or nine o'clock?
A. I tell him that; I could not prove it.
Q. That you thought it was about that time?
A. It was.
Q. That was your best guess about it?
340 A. I could not say.
Q. Did you see John Stratton that evening?
A. I see him that evening pretty early, about five six o'clock.
Q. You did not see him after that?
A. No, sir.
Q. You saw him in the evening down in the saloon?
A. I saw him on street and in saloon on Front street.
Q. You saw him several places that evening?
A. Yes, sir.
Q. Later on you went to some cabin?
A. I was around looking for friend—I was down town about seven, half past seven, and I afterward went to cabin—I afterwards go to cabin Mr. Mike Marovich, and nobody in that cabin.
Q. Nobody there?
A. Yes, sir.
Q. Was the door fastened?
A. Yes, sir.
Q. The door was locked?
A. Yes, sir.
Q. What time was that?
A. Half past six seven o'clock.
Q. Then where did you go?
A. In cabin Joe Sica.
Q. What time was it when you went to Joe Sica's cabin?
A. I could not say; it was not nine o'clock.
Q. You went from Marovich's cabin about what time?
A. About half past seven.
Q. Then you went over to Joe Sica's cabin?
A. Yes, sir.
341 Q. Was Joe Sica there?
A. I stand there four five minutes in front of his cabin.
Q. Was the door locked?
A. Yes, sir.
Q. Then where did you go?
A. I find piece sack in window. I pull sack back and go inside

and sit down by table. I see bread and fried bacon on table and I start to eat. I been in that cabin in winter.

Q. Whose cabin was that?

A. Joe Sica.

Q. You pulled open the window and went in and started to eat.

A. Yes.

Q. Why did you do that?

A. I was cold—I find no work—I want find friend and get something to eat—something if I find to do and get warm and ask him to stop all night.

Q. Did you go to the other place to stop all night?

A. I go to Mike Marovich and I get Marovich to stay all night.

Q. He was not there?

A. Yes, sir.

Q. He was not there—but you had gold dust on you?

A. But I had no money.

Q. Your nuggets were as good as money?

A. Yes.

Q. What did you do?

A. I stay there long time; I was hungry.

Q. You were getting something to eat?

A. Yes, sir.

Q. You had to break into this house to get a place to stay?

A. Yes.

342 Q. You had to go in through the window?

A. Yes.

Q. You had to raise the window up?

A. No.

Q. The window was open?

A. The window was open and piece of board—I know piece canvas in it.

Q. I know, but how did you get in?

A. I pull this piece canvas one side and go in.

Q. You pulled the canvas to one side and went in?

A. Yes, sir.

Q. You went in to get something to eat?

A. Yes; and warm myself.

Q. Had you been stopping with Joe Sica before that?

A. I did not stop all night.

Q. You climbed in the window and ate something?

A. I eat about five minutes and I think he was my friend and he would not care.

Q. You thought he was a friend of yours and would not care?

A. Yes.

Q. You had seventy-five or eighty dollars in nuggets in your pocket?

A. Yes, sir.

Q. Did you want to keep them for some time when you were hungrier than you were then?

A. I lots times get hungry, but I don't want to sell that gold.

Q. Joe Sica came and you were helping yourself?

A. Yes, sir.
Q. Then what was it he said to you?
A. He came and look to the door.
343 Q. What did he say to you?
A. He told me what you do here.
Q. What did he say to you?
A. What I do in his cabin.
Q. What did you say?
A. I was sitting down.
Q. What else did he say?
A. "Who told you come?" I says "Nobody tell me come." He says "How did you get in." I said "This piece cotton." He said "Who tell you do that." I said "Nobody." He said "I want arrest you." I think he was joshing. I said "What you want arrest me for." He said "You break in my cabin." I see he didn't josh that time. I said "You get mad; I give you money." He said "No, I go for marshal."
Q. Then what did you do?
A. I leave.
Q. What did you do?
A. I leave from that cabin.
Q. Where did you go?
A. Further up in brush to cabin—Marovich cabin—and get my bag.
Q. Marovich was not there—where was your bag?
A. I leave it at Marovich cabin.
Q. It was inside?
A. No, sir.
Q. Where was that bag?
A. Alongside cabin.
Q. Tell the jury where that bag was.
A. First time I come before I was in Joe Sica cabin, I put my bag longside cabin and there was glass in window, and I put my bag, this bag, alongside cabin.
344 Q. And then when you left Joe Sica's cabin you went back to Marovich's cabin to get your bag?
A. Yes, sir.
Q. What was in the bag?
A. Some shoes, pair overalls, some old socks, and stuff.
Q. What else?
A. Old socks, shoes, pair overalls.
Q. A pair of shoes, a pair of overalls, and two pair old socks?
A. Yes, sir.
Q. Anything else?
A. Not that I can remember.
Q. You had some ammunition?
A. I got one box cartridges.
Q. Were they in this bag?
A. Yes, sir.
Q. Where was your gun?
A. Same way by Marovich cabin, with bag.

Q. Where had you been before you went there?
A. What?
Q. Before you went—where were you before you went to Marovich's cabin?
A. I take the bag—he no want me keep it in his cabin—across slough one mile and quarter or two miles.
Q. That was where you had been keeping it?
A. Yes, sir.
Q. When did you get it and take it to Marovich's cabin?
A. Five, six, seven o'clock.
Q. You went over there and got the gun and bag and things about five or six or seven o'clock?
A. Yes, sir.
345 Q. Anybody with you?
A. No, sir.
Q. Were they at home when you got them?
A. Yes, sir.
Q. What were those men's names?
A. I know first name, one Tom, one Sam, and one Mark.
Q. Tom, Sam, and Mark?
A. Yes, sir.
Q. Three men were stopping there?
A. Yes, sir.
Q. Had you been stopping there?
A. I start to stop there, but I no like that man.
Q. They wanted you to get out?
A. Yes, sir.
Q. Had you been stopping there?
A. Lots of time: the time he make trouble with me he say he don't want me stop—"You come take your stuff out."
Q. Where did he tell you that?
A. I meet him.
Q. Where did you meet him?
A. I don't remember; I see him around town.
Q. Where did you sleep?
A. Sometimes in chair, sometimes on table, sometimes with friend.
Q. Sometimes you slept on the table or chair?
A. Yes, sir.
Q. How often did you do that?
A. I got no money to buy bed.
Q. You had money?
A. I did not call that money.
Q. You wanted to save that for harder times, did you?
346 A. Yes, sir.
Q. You got this bag from half past five or six o'clock to seven o'clock?
A. About half past six.
Q. You say it was about a mile and a quarter?
A. About mile and quarter from Front street across over to camp.
Q. Was it on the other side of the river?
A. Yes, sir.

Q. It was over in Graehl?
A. Across the river.
Q. Was it in this little town across the slough?
A. No; across that side.
Q. You went over there and came back. Did you cross on the bridge or ferry?
A. Yes, sir.
Q. You know where this bridge was on Cushman street?
A. I know one bridge; I could not say.
Q. You know where this bridge crosses the river?
A. Yes, sir.
Q. You know where that was?
A. Yes, sir.
Q. You came back over it?
A. Yes, sir.
Q. Then you went to Marovich's cabin?
A. Yes, sir.
Q. Put your bag and gun down and went to Joe Sica's cabin?
A. Yes, sir.
Q. It was dark?
A. It was near dark.
347 Q. Did you light a lamp?
A. I light a candle.
Q. Did you find something to eat?
A. There was something right on the table. There was a little fried bacon and piece of bread.
Q. All on the table?
A. Yes, sir.
Q. Anything else on the table?
A. I could not remember.
Q. You were hungry?
A. I was not so very hungry; I could eat just same.
Q. So you sat down to eat?
A. Yes, sir.
Q. You did not expect to stay all night?
A. I want to stay.
Q. You intended to stay all night with Joe Sica if you could?
A. Yes, sir.
Q. If you could not you would go and stay all night with the other man?
A. Yes, sir.
Q. You did not find Sica at home?
A. Yes, sir.
Q. You proceeded to help yourself?
A. Yes, sir.
Q. After he came then he was angry.
A. I see that he was mad.
Q. That is why you ran away from town?
A. Yes, sir.
Q. Because he was mad?

A. He tell me that he arrest me.

348 Q. You had been there about five minutes?

A. It was five minutes before I eat anything, and then I start to eat.

Q. Did you explain to him—did you tell him what you did?

A. I told him what you eat.

Q. You told him you were hungry and wanted to eat?

A. I no—I was no very hungry, but I was cold, and he act so he scare me.

Q. Now, after you left this cabin where did you first go?

A. I go to Mike Merovich's cabin.

Q. After you left that cabin with the gun and bag, where did you go?

A. I run right down to the river.

Q. Why didn't you cross the river?

A. I wanted to cross the river some place.

Q. Why didn't you cross on the bridge? What was your reason for not crossing the river on the bridge?

A. I get scared because Sica say he going to—that he want find marshal and he catch me.

Q. That was the only reason you did not cross the river?

A. That is all.

Q. You were afraid the marshal would catch you?

A. Yes, sir.

Q. You had traveled on the other side before?

A. Yes, sir.

Q. You knew where the trail was on the other side?

A. I know.

Q. You went on this side so the marshal would not find you?

A. I think he was going to put marshal on me, and I think he catch me if I go on that trail.

349 Q. Was the Chena River frozen at that time?

A. It was some places.

Q. You could cross in places?

A. I don't know; one place across this to telegraph line on this side Chena—one place I try I take long stick.

Q. You did try it there at the telegraph line?

A. I try with long stick first.

Q. Did you tell the marshal that that was where you crossed the river?

A. I didn't tell him.

Q. Didn't you tell him you crossed on the telegraph line?

A. I tell him I don't know where it was.

Q. He did ask you?

A. Yes.

Q. Did he tell you is this where you crossed—you did not cross it at all where the telegraph line is?

A. I can't understand much what he talk to me.

Q. You say you went down on this side of the river and then you crossed where the telegraph pole is this side of Chena, near Chena?

A. I try to cross, but I could not.

Q. You tried to cross?
A. I tried with stick, and stick he go through, and I have to go back.
Q. Did you tell the marshal that you did cross there?
A. I never.
Q. Do you remember him asking you about it?
A. I know he ask me something about it, but I never tell him I cross.
Q. You never crossed—you tried to cross?
350 A. I never cross; I just try to cross.
Q. You meant to say that you did not cross?
A. Yes.
Q. You did tell him that you cross the river down below Chena?
A. Yes, sir.
Mr. HARLAN. It is twelve o'clock. I can hardly finish before dinner.
COURT. Very well.
Mr. TOZIER. I wish to state that if any of the jurors have any business matters which they would like to attend to, I have no objection, providing they are in charge of a bailiff.
COURT. Gentlemen of the jury, when court takes a recess it will be until one thirty. In the meantime you will remain in the custody of the marshal, under the same admonitions which the court has heretofore given you not to talk to anybody nor to permit anybody to talk to you, and the marshal will see that that is enforced.
Court will take a recess until 1.30 p. m.

351 FAIRBANKS, ALASKA, *August 3, 1905.*

Court convened pursuant to recess at 1.30 p. m., and all parties being present as heretofore, the following proceedings were had:

VUKO PEROVICH, the defendant, recalled for further cross-examination.

Cross-examination continued by Mr. HARLAN:

Q. You did not know Jaconi's name?
A. I never know his name.
Q. You know where he lived?
A. I know what place he live.
Q. When did you say was the first time you were at his camp?
A. I would say 21st, 22d October.
Q. The 21st or 22d of October? Anyone with you?
A. I believe five in the morning; I believe forty, fifty men poleing small boats.
Q. Forty or fifty men poleing small boats up the river?
A. Some men with small boats, poleing boats, and these they pole up river.
Q. Were you in the tent at that time?
A. No; I just come down on the river; there was men I could see——

Q. I asked you if you were in Jaconi's tent at that time?
A. First time I was along bank, and he speak to me.
Q. Did you understand me? Did you go into Jaconi's tent or cabin, whatever you may call it—the place where he lived? Did you go in there at the time you were going up the river with these other men?
A. I did.
Q. Went in with him?
352 A. I don't remember; I remember one morning—I was two times in tent.
Q. Well, you were there this time?
A. I was.
Q. Go ahead.
A. He said go get a light.
Q. What did you do?
A. Get a little light—a little paper and match—and light fire.
Q. You went in his tent?
A. Yes, sir.
Q. Was it daytime or night?
A. Daytime.
Q. Was he there?
A. He was in front of cabin; he told me go inside and get light.
Q. He told you to go in and get a light?
A. Yes.
Q. He was outside of the tent?
A. Yes. He was sawing some wood in front of tent.
Q. Between the cabin and the river?
A. Yes, sir.
Q. That all he said?
A. That all I said, "I go light my pipe." He said, "Go right in here." He speak English to me, and I go in there and get light and sit down on little chair about five minutes and get light and get little smoke and warm my hands, and my partner call me to go down to work on boat.
Q. Did you go?
A. Mr. John Stratton and another man—Scotchman—I don't know his name.
353 Q. John Stratton and another man called you to go to work?
A. Yes, sir.
Q. After that you went, did you?
A. I ask him where he have supper for three men, and he says three men and he got little grub for himself. He said he give three men this first night supper and pay him three dollar and half, and he say he no got anything left at all.
Q. They had been there the night before?
A. Yes.
Q. He had nothing left?
A. Yes. He tell me you come; I said that one man Slavonian—speak Slavonian; he say, "You mean Mark Scorlich."
Q. You had been there before when Mark Scorlich was there?

A. Yes.
Q. That was before this time?
A. Yes, sir.
Q. Do you remember how long that was before this?
A. I think it was on 20th October.
Q. You think you were there on the 20th of October, when Mark Scorlich was there?
A. Yes, sir.
Q. You think this was the 21st or 22d?
A. I can't remember—21st, 22d.
Q. It was a day or two before that that you went there when Mark Scorlich was there?
A. Yes, sir.
Q. Was Stratton there?
A. Not that time.
Q. You and Stratton had been there before?
354 A. We had been there, but never——
Q. You and Stratton had been there before that?
A. Before that?
Q. You and Stratton had been to this cabin or tent before you came with these men?
A. Yes; we go down that night, next day get job on boat.
Q. You had been there before, then?
A. In the morning.
Q. You had been there when Scorlich was there?
A. Yes, sir.
Q. That was three times you had been there?
A. That is two times; one time I see Mark Scorlish and another this time—when I go with Stratton I don't see anybody.
Q. I am not asking you about that. You told that once. The first night you left here, you staid at what place? Where were you the first night, the 28th of October?
A. I go down by river.
Q. The first night you did not stay anywhere?
A. I get tired, I sit down—I get cold, I walk again.
Q. That is the night you made a fire on the river bank?
A. Yes, sir.
Q. Where did you stay the next night?
A. With Dick.
Q. Dick Hearn?
A. Yes, sir.
Q. Where did you stay the next night, with Giddings?
A. I am not familiar with anybody name.
Q. You gave a cap and shirt to whom?
A. I don't know that man, his name, before tell me this place down there?
355 Q. You knew Dick Hearn—his name?
A. Never before I hear it here; nothing where I work for him.
Q. You know who you gave the cap to?
A. I know it was one man there that says the cabin belong to him.
Q. That was Dick Hearn?

A. That must be; he get the same look.
Q. You have learned that that was Dick Hearn?
A. Yes, sir.
Q. That is where you staid the next night?
A. Yes, sir.
Q. Where did you stay the next night?
A. Down below steamboat.
Q. Close to the boat where you saw the woman?
A. Mile and half—two mile.
Q. The next night you stayed at what place?
A. The next night I stay down with Lodge.
Q. You ate at Kane's; you had breakfast?
A. I get breakfast; he had breakfast, and I ask him to give me what he had left.
Q. That is where you saw the man that you thought looked like a Norwegian?
A. I take him like that.
Q. The next place was Lodge's—that would be three days?
A. Yes, sir.
Q. You were there three, four, or five days?
A. Three days, and I work after that and fix up cabin.
Q. You came back to Kane's, and that was where the officer found you?
A. Yes, sir.
That is all.

356 Redirect examination by Mr. TOZIER:

Q. After you were arrested and brought up here to Fairbanks jail how many times did Marshal Dreibelbis talk with you, do you remember?
A. How many times?
Q. About.
A. These nine months?
Q. No; for the first three weeks.
A. For the first three weeks?
Q. About how many?
A. First time take me from jail in same room over there, that side, I went there with Mr. Stier and Mr. Peter Vidovich, and they read what I don't know what, what for I arrest, that would be you call report. And somebody they read it to me, and somebody tell Mr. Vidovich tell him did you do did you not do.
Mr. HARLAN. We object on the ground that it is not responsive to the question.
Q. What was done at that time?
A. Ask me, "Did you do this?" and I never before this time hear about it. He tell me that Mr. Stier read this paper.
Q. Was that Judge Stier? He was judge at that time.
A. He tell me "Do you want any lawyer?" I tell him I want somebody——
Mr. HARLAN. We object to this. It is not responsive to the question Mr. Tozier asked him.

Q. Vuko, don't speak so much, just answer my questions. Who all was there at that time?

A. I can't remember anybody else, Mr. Marshal, Mr. Stier,
357 and Mr. Peter Vidovich, that I could remember. There might be somebody else I could not remember.

Q. Was that the time the marshal asked you about the ring?

A. No, sir.

Q. Where were you when the marshal asked you about the ring?

A. First time when he was with chief police himself that room over there [indicating].

Q. Who did most of the talking?

A. Mr. Chief of Police Wickersham. He said "Talk some to me," and he said, "I could no understand anything he say."

Q. Was that after you had seen your lawyer?

A. That was same time when he come witness where he was.

Q. I mean in reference to when you were before Judge Stier for your preliminary examination?

A. You mean with Judge Stier?

Q. Yes.

A. That was before I ever see him.

Q. Now, whereabouts did you cross the river down here when you went downstream?

Mr. HARLAN. We object to this; it has all be' gone into.

COURT. Objection overruled.

Q. Whereabout did you cross the Tanana River or any river below Fairbanks when you went downstream?

A. I tell you three times same river.

Q. What kind of river?

A. Went straight from Fairbanks.

Q. You told the district attorney, this man here, that you crossed a little river; little slough?

A. You come from Fairbanks on left hand, and you go what way [indicating], and then you come up here [indicating]; here
358 one little slough right here.

Q. Is that a big slough or little slough?

A. About twenty feet.

Q. A small slough. Then what did you do?

A. I cross right here [indicating] above this slough. This side river here. I try to cross on ice by telegraph pole. I can't do it. I go alongside this slough.

Q. Why could you not cross where the telegraph station is?

A. Well——

Q. How hid you try to cross?

A. I take a long pole and brush and hit ice in front all time. Then I hear ice crack and I go back.

Q. Where did you go?

A. I follow on this little slough and cross this a little river—little brush—one place little brush, some place on ground, and I get across this slough and come right here, right over from Chena, and I come to little jamb here, little place look to me froze pretty solid. I take my rifle and I walk all time, hit down with rifle, and then I come

down across this slough and here seen upon slough some cabin. Some dogs raise hell with me, and I go down here.

Q. When you got across the big stream which way did you go?

A. Right on this side this river.

Q. You kept on this side of the river?

A. Yes, sir.

Q. Did you see any cabins?

A. I cross right like here, this big stream, and went down below Chena. You can see him from Chena—below Chena—and you go fifteen miles, look to me, and when I get up on the bank lots dogs raise hell with me.

359 Q. Did you see any Indians below there—Siwashes?

A. Below this I cross river on another side. There is a little island, three four cabins; I don't know how many.

Q. You told Dick Hearn that you stopped with two men, Tom and Henry?

A. Yes, sir.

Q. Did you say that you meant by these two men the two men at whose cabin you had been to when you came up the river the first time—that is what you meant?

A. I can't understand what you mean.

Q. Do you remember where you worked the first time you came up the river?

A. Yes, sir.

Q. And then you say you told Dick you stopped the night before with Tom and Henry?

A. Yes, sir.

Q. That was where you had been before?

A. Yes, sir.

Q. You did not stop there, though?

A. I say I talk if I walk all night; he tell me get out, and I want to ask him for job.

Q. Before you left Fairbanks you were in Joe Sica's cabin?

A. Yes, sir.

Q. You say when Joe Sica came there you had been there five or ten minutes?

A. I think more than five; about ten minutes.

Q. And you had a candle lit?

A. I lit it. It set on table, and I light candle and sit down alongside table.

Q. And when Joe Sica came in he was angry. Was he mad? Did he talk bad?

360 A. When he see me he come in; he can't open door for two, three minutes, and then he opens door, and he says, "What you doing here?" He didn't talk so mad, and I said, "I just sit down."

Q. Just a moment—what you told before to the district attorney. Was there a window in Joe Sica's cabin? Was there any glass like this?

A. No.

Q. What was it?

A. I think cotton. I think that was sack, flour-sack cotton.

Q. Had you been in the cabin before?
A. I had been there a few times.
Q. Did you believe Joe Sica was your friend?
A. I believe.
Q. What countryman is Joe Sica?
A. He was Austrian, I think.
Q. Does Joe Sica speak your language?
A. Yes, sir.
Q. When you were there before, did you speak in your language?
A. Same language.
Q. What countryman was Mike Marovich?
A. Same countryman.
Q. Does he speak your language?
A. Yes, sir.
Q. Were you and Marovich friends?
A. Together from 1903, in August.
Q. You say you saw Mark Scorlich twice at the fish camp?
A. I never see—I see him one at fish camp, and another fellow once. I don't know his name at all.
Q. Was the other fellow, Jaconi, a countryman of yours?
361 A. No; he Austrian.
Q. Did he speak your language?
A. Yes, sir.
Q. Did Mark Scorlich speak your language?
A. Yes, sir.
Q. When was it you got mad because the officers would not bring some one to speak your language?
Mr. HARLAN. I don't understand that that was brought out.
COURT. You may ask what was done. I do not remember that he said that.
Q. Did you go with the officers any time and talk in any room here or at the jail?
A. Nobady but Mr. Dreibelbis.
Q. Did you have a talk with Mr. Dreibelbis and Mr. Wickersham?
A. Yes, sir.
Q. Did you get angry that time—get mad?
A. I did not get very mad.
Q. Just answer by yes or no.
A. I did.
Q. What did you get mad for?
A. Because something around about—I don't understand everything and I can see no friend—no friend that can tell me about it.
Q. Did any of your friends come to see you?
A. Yes, sir.
Q. Who did come?
A. Mr. Peter Vidovich and Mike Marovich.
Q. Did you tell Marshal Dreibelbis that you wanted a countryman to talk to you—some friend who could speak your language and talk to you?
362 A. Yes, sir.
Q. What did Marshal Dreibelbis say?

A. Well, another fellow—I don't know Mr. Chief of Police that would be——

Q. That was Edgar Wickersham.

A. He said to Mr. Dreibelbis he could not understand me and Mr. Dreibelbis said he understand me everything and I no need my countryman.

Q. Where did you get that bag—did you get it in Dawson?

A. I had same bag—look like same bag—when I leave that bag it no have cut in it.

Q. Where did you get that bag?

A. I get it in Dawson.

Q. How long did you own it—when did you get it?

A. You mean when?

Q. Yes.

A. When I get it from one man who work same claim twenty-two on Dominion—we both work on same claim same time.

Q. What countryman was he?

A. American. He call his name Frank. I think little fellow, about twenty-two years.

Q. Is that the bag you brought your things from Dawson in?

A. That is same bag. I never see that writing before.

That is all.

Recross-examination by Mr. HARLAN:

Q. This bag has been changed you say since you used it?

A. Yes, sir.

Q. In what way?

363 A. Somebody cut it in side.

Q. Do you know who did it?

A. I never cut that myself. It never was cut that way when I left.

Q. Do you know who did cut it?

A. I don't know.

Q. You don't know how that happened to be cut?

A. No.

Q. Did you tell the marshal that you wanted to see any of your countrymen?

A. I tell him I want to see one.

Q. Did he come to see you?

A. He come—I can't tell what day it was.

Q. He did come to see you, did he?

A. Yes, sir.

Q. Was Jaconi an Austrian?

A. That is what Peter Vidovich say.

Q. Could you tell from the way he talked?

A. He talked the same way I talk myself.

Q. Did he talk like Scorlich?

A. Yes, sir; all Slavonian. That little fellow with whiskers, the prosecution witness, he say a little different; I don't understand everything.

Q. They all talk the same as Jaconi except that one?

A. All about same.

Q. All about the same as you?

A. Yes, sir.
Q. It is practically the same language?
A. Yes, sir.
Q. You could not tell from the way they talked one from the other?
364 A. I could tell the man with whiskers.
Q. You could not tell Vidovich?
A. No.
Q. You understand that he was same as the others—these Slavonians—all from Austria?
A. He tell me he was Slavonian.
Q. He told you himself when you was talking with him?
A. He ask me where I from, and I tell him from, and he tell me he was Slavonian.
That is all.

Mr. TOZIER. I would like to recall Mr. Haidukovich and would like to have an interpreter. I think Mr. Jelich could act as interpreter.

COURT. You can have anybody you want as interpreter.

PETER JELICH called and sworn to act as an interpreter in this case.

JOHN HAIDUKOVICH, called for further examination on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. TOZIER:

Q. Did you bring anything from Dawson on the boat for Vuko Perovich?
A. He has.
Q. Did you bring a canvas sack from Dawson on the boat for Vuko Perovich?
A. He have.
Q. What size sack was it?
A. From three to four feet high.
That is all.

365 Cross-examination by Mr. HARLAN:

Q. Do you remember whether there were any marks on it—writing on the bag?
A. He don't remember.
That is all.
Defendant rests.

366 *Rebuttal testimony for prosecution.*

PATRICK CALVEY, a witness called in rebuttal on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?
A. Patrick Calvey.
Q. Where do you live?
A. Cleary Creek.

Q. How long have you lived in this part of Alaska?
A. A little over a year.
Q. Where were you last October?
A. Well, I was in Fairbanks the latter part of October.
Q. Do you know where you were on the 28th of October?
A. I was in Fairbanks.
Q. Where were you on the 29th of October?
A. I left Fairbanks and started down the river.
Q. To go to what place?
A. I was going to a wood camp on Lavelle Young slough.
Q. What time did you leave Fairbanks?
A. About eight o'clock in the morning.
Q. How were you traveling?
A. Traveling afoot.
Q. On which side of the river did you go?
A. I crossed the bridge at the foot of Cushman street, and then I went down on the ice, and when I got down opposite the slough I started out and got on the right of way of the railroad.
Q. Did you proceed on that then?
A. I proceeded on that to Chena.
367 Q. Where did you stop that night?
A. At a fisherman's camp.
Q. How did you go?
A. I walked upon the ice part of the time and part of the time on the telegraph line.
Q. Do you know how many miles you went on the telegraph line?
A. Four miles.
Q. The rest of the time you were where?
A. I was generally on the shore ice.
Q. What was the condition of the river near the town of Chena?
A. The condition of the slough was frozen.
Q. How was the Tanana River?
A. In places it was closed and in other places it was full of slush ice—running ice.
Q. You may state whether or not one could cross on the ice.
A. Well, it did not look to me as though one could.
Q. In your opinion could it be crossed?
A. How do you mean?
Q. I mean by crossing on the ice.
A. No; it could not in any place where I saw it.
Q. You were on the shore except for about four miles.
A. On the shore ice most of the time on the Chena slough, but not on the main river.
Q. Did you ever travel on the left hand of the Tanana River?
A. No, sir.
Q. Where is the trail that people travel on, as far as you know?
A. As far as I know, on the right-hand bank.
Q. Had you traveled there before that time?
A. I never traveled afoot before that.
Q. When did you come up the river?

A. That time I came about three days afterwards.

368 Q. The first time you came up the river how did you come?

A. By steamboat up the Tanana River.

Q. Did you ever see this defendant, Perovich?

A. Yes, sir.

Q. Where did you see him and when?

A. Well, I saw him the night that I stopped at the fish camp. That was not the first time I saw him.

Q. Whose camp was that?

A. I found out afterwards that it was a man named Dick Hearn.

Q. You had seen the defendant before?

A. Yes, sir.

Q. Where?

A. On the steamer "Cudahey," coming down the Yukon River.

Q. Then, when you saw him this night you recognized him?

A. I saw him and knew him.

Q. Did you have any talk with him?

A. I did afterwards; I had a slight conversation with him.

Q. With regard anything where he had been and where he was going?

(Objection. Objection overruled.)

A. I did; yes, sir.

Q. What was it?

A. He told me where he had been around Fairbanks and what he had been doing—some of it.

Q. Did he tell you when he left Fairbanks?

A. No; he did not.

Q. Did he tell you where he was going?

A. He did not.

Q. Did you see anything he had with him—taking along with him?

369 A. No, sir; I did not see it in his possession.

Q. You did not see anything in his possession?

A. Not in the cabin.

Q. Did you leave there before he did?

A. I did. He was there when I left.

Q. Where did you go?

A. I came back up the river about a mile.

Q. Then, you saw nothing more of him?

A. No.

That is all.

Mr. TOZIER. No cross-examination.

370 THOMAS HAGGERTY, a witness called in rebuttal on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. HARLAN:

Q. What is your name?

A. Thomas Haggerty.

Q. Where do you live, Mr. Haggerty?

A. I live in Chena.

Q. Where were you living last fall, in October?

A. I had a fish camp about ten miles below Chena.
Q. On which side of the river?
A. On this side of the Tanana.
Q. On this side of the Tanana—on the right or left bank?
A. Right bank, going down.
Q. Where did you see—did you ever see this defendant?
A. I saw him when he came up on the steamer "Los Angeles."
Q. Was he on the steamer?
A. When he landed at my camp.
Q. Did that boat land there?
A. Yes, sir.
Q. How long did you see him?
A. He worked six days.
Q. Do you remember when that was?
A. That was some time before the 20th of October. I don't know the date. The middle of October.
Q. It was a boat coming up the river—the last boat.
A. Along with other steamers.
Q. Did he lodge there with you?
A. He helped me to build a cabin, and after we built the cabin he helped me with the fish.
371 Q. After you built the cabin did he stop in it with you?
A. Yes, sir.
Q. You had a tent before that?
A. Yes, sir.
Q. The water was not frozen then?
A. The nights were a little cold.
Q. Did you see him after that?
A. I seen him after he left. I was going up to Chena and he was going down. I met him about two miles and a half from my camp. He was going down and I was going up.
Q. When was that?
A. A week or ten days after he left, as near as I can remember.
Q. A week or ten days after he had worked for you?
A. Yes, sir.
Q. You can not tell what time of the month it was?
A. No; I can not.
Q. Was he traveling alone?
A. Yes, sir.
Q. Did he have anything with him?
A. I don't remember that he did.
Q. Did you have any talk with him?
A. I just had a few words.
Q. Did he say where he was going?
A. He said he was going down to work for a fellow who had promised him a job.
Q. Did he name the party?
A. He did, but I do not just remember the name.
Q. Did he say what kind of work he was going to work at?
A. Build a road house.

Q. Did you see him after that?

372 A. Yes, sir; I saw him in the Arctic Saloon.

Q. Did you see him on his way back?

A. As he came back?

Q. Yes.

A. I met him in the Arctic Saloon a few days later in Chena.

Q. Do you know how many days that was?

A. Four or five days. I don't remember the date.

Q. That would make it something like fifteen days after he worked for you?

A. It would be all of that.

Q. Did you have any talk with him?

A. Just a few words. He said the party was not going to build then and had no work for him then.

Q. Did you see him after that?

A. No, sir.

Q. Where were you on the 29th of October?

A. I was in Chena.

Q. You had left your place below Chena?

A. I came up the time I met him and stayed up until about the time the river closed.

Q. Then you were in Chena on the 29th?

A. Yes, sir.

Q. You remained there from the time you saw him until the Tanana closed?

A. I don't remember whether it was closed or not when I went down.

Q. Do you remember when the river did close?

A. It closed—I think the first of November it closed.

Q. About the first of November?

A. Yes, sir.

373 Q. Did you have any conversation with the defendant when he was at your house?

A. We had some talk about one thing and another that would happen.

Q. He worked for you as long as you had any work for him?

A. Yes, sir.

Q. You can't fix the date when you went down the river and closed up your camp?

A. No; I don't know just the date.

Q. That was about ten miles below Chena?

A. About ten miles, I should judge.

That is all.

Cross-examination by Mr. TOZIER:

Q. You would not be certain as to any of those dates?

A. I was certain about being in Chena on the 20th.

Q. Three or four days or possibly four or five days; you would not be certain as to that time?

A. I could not be certain as to the exact date.

Q. You are not certain, then, just when you met Perovich on the trail?

A. No; I am not certain as to the date.

Q. You remember the time that you were in Chena?

A. Yes, sir.

That is all.

374 Redirect examination by Mr. HARLAN:

Q. State whether or not this defendant, while at your place, said anything about what kind of a country this was for committing crime and getting away.

Mr. TOZIER. We object to that.

Mr. HARLAN. This was before the crime was committed.

COURT. The objection may be overruled and an exception allowed.

Q. State whether or not he did.

A. Yes, sir.

Q. You may state what he said.

A. He was talking about different men and crime and things, and he said this was a good country; he said a man could commit a crime and go to another town a little ways from that and nothing more would be heard of it.

Q. Nothing more heard of it?

A. Yes; that is about all I heard him say in regard to that.

A. That is all.

Recross-examination by Mr. TOZIER:

Q. Did he not tell you at that time when you were talking that this was a good country?

A. We were talking about it.

Q. You were talking about that, and he said this was a better country to prevent crime?

A. No, sir.

Q. Did he say it was a better country to commit crime in?

A. What he said was; that it was a good country, and I said "Why"——

375 Q. You took it for granted that he meant this a good country to commit crime in?

A. No; I asked him why, and he said you can commit crime and go a little ways off and hear nothing more about it.

Q. Did you know anything about the Terrill crime?

A. Only what I read about it.

That is all.

376 MIKE TOROTICH, being recalled in rebuttal on behalf of the prosecution, testified as follows:

Direct examination:

Q. What kind of work were you doing down the river last fall?

A. I was fishing.

Q. Where was your fish camp?

A. Two miles below Chena—not quite.

Q. On which bank of the river?

A. On the left-hand side downstream.
Q. On the Tanana River on the right or left side?
A. On the left side as you go down.
Q. Do you remember the condition of the river on the 29th of October?
A. Yes, sir.
Q. The Tanana River?
A. Yes, sir.
Q. What opportunity did you have for knowing the condition of that river?
A. Tom Haggerty called to me from the other side.
Q. He called to you?
A. Yes, sir.
Q. That is when he informed you that Jaconi's house had been burned?
A. Yes, sir.
Q. What did you do then?
A. Took a boat and crossed the river.
Q. Do you know the condition of the Tanana River, whether—I will ask you whether or not the river was frozen?
A. All I could see it was all open.
Q. How was it below your place?
377 Q. What day did you cross the river?
A. The last of October.
Q. It was the Monday after the house had been burned?
A. Yes, sir.
Q. When did you return there?
A. I returned a week afterwards.
Q. Do you know when the river closed?
A. The river closed the time I was up here; I don't know the date.
Q. Had it been closed before you left down there?
A. No.
Q. How is the river at the mouth of the Chena River—that is, how is the Tanana River as to ice?
A. There was a crust along the bank where I was about seven or eight feet from the shore, and on the other side where I landed about twenty-five or thirty feet—in an eddy.
Q. Can you tell the jury how the river is at the mouth of the Chena—as to how the Tanana River is?
A. It is a slough.
Q. The Tanana River where the slough runs into it, how was that as to ice?
A. It was open—it seemed to be open.
Q. Is it a large river?
A. The Tanana River is a large river.
Q. Is it larger there at the mouth of the Chena slough?
A. It is wide there, and it is full of islands all around it.
Q. How was the river where you crossed it?
Q. Where I crossed there is no slough—nothing but the river. The

river is—I have no idea how many yards wide it is—it is all one stream where I crossed it.

378 Q. Can you tell about how many yards it is across?

A. Probably four hundred yards.

Q. How is it at the mouth of the Chena River?

A. At the slough?

Q. Where the slough runs into it.

A. It is wider, and there are some flats in it.

That is all.

Cross-examination by Mr. TOZIER:

Q. Where did you say your camp was?

A. About two miles below—probably not quite—not over two miles.

Q. The river you have been testifying about is the Tanana River, two miles below Chena?

A. Yes, sir.

Q. Are you around that rocky point just below Chena?

A. Yes, sir; below that between the two bluffs on the other side of the river.

Q. There is only one channel to the river there?

A. Yes, sir.

Q. It is quite a stream?

A. The stream goes right along by my camp.

Q. There is only one channel there?

A. Yes, sir.

Q. You said it was frozen out about seven or eight feet?

A. It was.

Q. Did you say somebody called to you across the river?

A. Tom Haggerty called me.

379 Q. When was that?

A. This was in the morning, about eight o'clock in the morning. He said, "They want you at Fairbanks." He said, "They found your camp burned."

Q. Didn't—you testified about him calling you over?

A. Yes, sir.

Q. Didn't you say you had some trouble getting over?

A. Yes, sir. When I crossed I pulled my boat down, and when I got on the other side I had trouble landing, and I drifted down along shore and landed at a small island.

Q. That is the trouble you had reference to yesterday when you were testifying?

A. Yes, sir.

That is all.

380 GEORGE DREIBELBIS, being recalled in rebuttal on behalf of the prosecution, testified as follows:

Direct examination by Mr. HARLAN:

Q. Did you have a conversation with the defendant concerning the underclothes which you found on him—the yellow suit?

A. I did.

Q. State whether or not he told you where he got them.
A. He told me at that time that he bought them in Dawson.
Q. Where were you when he told you?
A. While we were on the trail after I arrested him.
Q. Was anything said by you to induce him to tell you that?
A. Nothing whatever.
Q. State whether or not you found any ring with him.
A. I did not.
Q. Did you make any inquiry about a Yukon ring?
A. I did later on.
Q. Where did you do that?
A. I inquired after I went down the river.
Q. Did you make any inquiries of him at that time?
A. I did not; I learned that a ring was supposed to be missing, and I was looking for one or anything I could find out about one when I went down the river the second time.
Q. After you returned you talked to him about it?
A. I told him, "You say you did not have a ring," and I asked him in particular about whether he had a ring or not, and he denied that he ever had a ring while he was down the river.
Q. In the description of the nugget chain that he told you he had traded for the watch and clothes and other things, did he ever state how many nuggets it was composed of?
381 A. He did.
Q. What did he say?
A. He said it was made up of fifteen nuggets. The crossbar—he stated positively there were five in the crossbar. Afterwards he qualified that and said it was made of six.
Q. Did he say anything else about any particular nugget?
A. He described and attempted to make a drawing of the nugget that was on the chain as a charm.
Q. Have you that drawing?
A. I have.
Q. Will you produce it?
(Witness produces drawing.)
Q. State whether or not the drawing was made by the defendant himself.
A. Yes, sir; it was.
Q. How did he come to do that?
A. He was telling about the chain and describing it. He said he had given this chain to these two men. He was describing it in particular, so that if we found the chain we would know it.
Q. Was this drawing made at your suggestion?
A. No; he offered to make a drawing.
Q. Who was present with you, if anyone?
A. Edgar Wickersham.
Q. Now, where was this done?
A. In the room back there.
Q. Who was present?
A. The defendant, Edgar Wickersham, and myself.

Q. Did you then tell him or inform him that you had secured the chain?

382 A. No; I did not have the chain at that time. We were endeavoring to find it. We had not found it at that time.

Q. You may indicate on this paper the drawings that he made.

A. He made two drawings to the right of this paper. He made this drawing first and that one later. This one he did not like and drew another at the same time, only a little later.

Q. Who made the other drawings?

A. The other was made by Edgar Wickersham, and it did not suit him, so he made this to show us what it was like.

Mr. HARLAN. I offer these two drawings in evidence and ask that they be marked "A" and "B."

Mr. TOZIER. I object, and also object to any further evidence regarding any conversations that took place between this defendant and Edgar Wickersham, and ask that same be stricken from the record.

COURT. Upon what grounds, Mr. Tozier?

Mr. TOZIER. It takes the form of an admission. If it is anything, it is an admission, and it has no place in the record.

COURT. The objections may be overruled and an exception allowed to each of them. They may be admitted.

Q. Have you the chain?

A. It is in the safe.

Q. Will you bring it?

(Witness produces chain.)

Mr. HARLAN. I think the chain was marked for identification.

Q. I will ask you to examine this chain and state whether

383 or not this is the chain which was afterwards secured from Mr. Haidukovich.

A. Yes, sir; I secured it from other parties.

Q. You may state whether or not at any time prior to your securing this chain—prior to the time you showed this chain to him—if he described it.

A. He spoke about these nuggets before they were made up, and told in detail about making the chain or having it made.

Q. What did he say about it?

A. He said that he and Haidukovich had the chain made together. He said that neither had enough nuggets to make a chain, and that they had put them together, and that he and Haidukovich had been working together, and that they had picked these nuggets up; that neither had enough, so they put them together and had the chain made. He stated positively before seeing the chain that the chain he and Haidukovich had made was the one he traded.

Q. Did he inform you who made the chain?

A. He endeavored to.

Q. Who did he say made it?

A. A Frenchman by the name of Phillips, in Dawson.

Q. Now, in relation to your conversation with him, when was it he first alluded to another nugget chain?

A. After about three or four weeks Edgar Wickersham and I went in with this chain and showed it to him and asked him whether it was the chain he had traded, the one that he and Haidukovich had had made. He said that was the one he and Haidukovich had had made, but that it was not the chain which he had traded for the clothes. He said that the nuggets were not made up, but that
384 there were enough nuggets to make a chain. He denied at that time that it was the chain he had traded for the things he said before he had given for it.

Q. You may describe to the jury, if you please, the Tanana River—the character of it at the mouth of the Chena, where the Chena River flows into the Tanana River; whether it is quite wide where the Chena River enters it.

A. The Tanana River is quite wide there from bank to bank.

Q. Has it a channel?

A. Several channels.

Q. Do you know whether there was enough water for boats to go up it?

A. The main channel is navigable at that point. The main channel is quite a distance from the mouth of the Chena River.

Q. Do you know as a fact what time the Tanana River closed that year and the ice quit running?

A. No; I do not know when all of it closed.

Q. I will ask you to examine this drawing. Examine those red and blue lines—this is the Tanana River—and state whether or not this is a fairly good drawing of the Tanana River at that point.

A. It is.

Q. We would like to have you put some marks and figures on that as we make inquiries.

A. This is the Chena River.

Q. Mark it "A," and mark the other blue line "B." What is this mark supposed to be?

A. Noyes slough.

Q. Mark that "C."

A. This is the road or telephone line ("D").

Q. Now, on the other side of the river, according to this,
385 what would indicate the summer trail as used last summer?

A. Here.

Q. Mark that "E." This red mark, what would that indicate?

A. That would indicate Hyde's ranch.

Q. Mark that "F." What is this group of red spots?

A. Jaconi's fish camp.

Q. Mark that "G." Now, these marks up here?

A. That would be Fairbanks.

Q. Mark that "H." These marks?

A. They would indicate Chena.

Q. Mark that "I." Now, this mark across the river to Chena, what is that?

A. That would be the telephone line.

Q. Mark that "J." Where does this line proceed from Chena, where it crosses near the mouth of the Chena River?

A. Which, the telephone line? Well, it passes through Chena and goes right on up the Tanana River.

Q. Up the Tanana River and on the island on which this town is built?

A. It passes on the opposite side of the island.

Q. It crosses the Chena River and then runs along on the island upon which the town of Fairbanks is situated?

A. Yes; down at the lower end of the island.

Q. How far is that from here?

A. It is about ten miles by the winter trail. Following the bank, I should judge it would be about thirteen miles.

Q. Is there any way of getting from here to the left bank of the Tanana River?

A. No, sir; not unless you had a boat.

That is all.

386 Cross-examination by Mr. TOZIER:

Q. I will hand you prosecution's identifications A and B. What is this which you have crossed out?

A. That was made by Edgar Wickersham.

Q. What did you say Perovich represented this to be?

A. He explained that that was a drawing of the large nugget used on the chain as a charm.

Q. You are positive that it was a drawing of the charm on the chain that he and Haidukovich had made?

A. Yes, sir.

Q. And you are sure that he did not say that it was a nugget that he had for a charm?

A. He did not.

Q. You are positive of that, are you, Mr. Dreibelbis?

A. Yes, sir.

Q. You asked about that, did you, when these diagrams or drawings were made by him?

A. That is what he told me.

Q. Examine this, prosecution's No. 35. Who prepared this?

A. I think Mr. Cohn did.

Q. Was you present when it was being drawn?

A. No; I was not; it was referred to me.

Q. You don't pretend that it is correct?

A. Fairly correct.

Q. In reference to the general direction and the distances?

A. I think it is fairly correct.

Q. This does not show but one slough between the town of Fairbanks and the confluence of the Chena River with the Tanana. Is that the only slough that passes in there?

387 A. No; there are others.

Q. How many?

A. I can not remember—I would not undertake to say.

Q. This you say is the Tanana River; does that represent the width of the river?

A. I would not say that is a fair representation in reference to the width of the river.

Q. Do you know of your own knowledge just how many channels there are just above the mouth of the Chena River in the Tanana River?

A. No; I would not say.

Q. Do you know if there are any poles in this vicinity—in the vicinity of where the telephone line crosses the Chena River?

A. There is a pole here at the end of the island.

Q. On which point?

A. Right opposite the mouth of the slough.

Q. Above or below the mouth of the slough?

A. Where the little slough comes in near where the big slough comes in.

Q. That is, in there on the right bank of the Chena River, as you ascend it. Just above the confluence of the Tanana with it?

A. It should be right here. That is on this point. There is another slough going out of the Tanana River and comes down here. I don't know where that comes from; and there is a slough emptying into the Chena River about there—about a half mile from there. That is above where the telegraph line crosses the slough.

Q. A small slough, is it?

A. It is quite wide.

388 Q. You don't know where that comes from?

A. No.

Q. Do you know the distance between the point "G" and the mouth of the Chena River?

A. Only by the winter trail.

Q. What would you say it was by the winter trail?

A. It is seven miles.

Q. What would be the distance between the point "G" and the point "H?"

A. Three miles.

Q. That would make the distance from the point "H" to the mouth of the Chena River, how far?

A. Ten miles.

Q. From the mouth of the Chena River to the town of Chena, how many miles?

A. About three-quarters of a mile.

Q. Could you indicate on this where the Marconi pole stands?

A. There is a little slough coming in here; it would be right there.

Q. You mean by this that the summer trail, marked "E," that the Marconi pole is on the summer trail?

A. Right in there.

Q. That is on an island?

A. No; the Marconi pole is on the mainland.

Q. There is a little slough just above Chena?

A. There is a little slough between the Marconi pole and the Chena River.

Q. So you had a talk with Perovich on the trail?

A. Yes, sir.

Q. When you said that you did not, you were mistaken?

A. I did not have any conversation about the Jaconi matter.

389 Q. What was that conversation about?

A. About the things he had in his possession.

Q. You said——

A. I think there was a question asked me about whether I had mentioned Jaconi's name or not.

Q. First you said no, and then you said yes.

A. Yes, sir. I mentioned it.

Q. I asked if you did not say no and then say yes?

A. Yes, sir.

Q. Then if you did say, Mr. Dreibelbis, when you were on the stand before that you did not, you were mistaken?

A. I was. I never understood the question that way. I don't think the question was put to me that way before.

Q. In giving evidence in regard to this chain before didn't you state that he endeavored to make a drawing of the nuggets on the crossbar?

A. No, sir.

That is all.

Redirect examination by Mr. HARLAN:

Q. With regard to this identification No. 35, I will ask you if you did not draw a rough sketch of this—of the Chena River and of these other figures and the trail between here and Chena?

A. I did.

Q. It was afterwards put in this form by Mr. Cohn?

A. It was.

390 Q. I will ask you if it was not drawn in accordance with your directions and then referred to you?

A. Yes, sir.

Mr. HARLAN. We offer this sketch in evidence.

Mr. TOZIER. I object, on the ground that it is not drawn on a scale; it does not show the distances; it does not show the Chena River as it is; it does not show the sloughs entering into the Chena River; it does not show the sloughs as they are entering into the Tanana River; it does not but one channel in the Tanana River. If the court please, I do not want it to go to the jury, for the reason that it would be misleading and would be apt to mislead and deceive the jury.

COURT. The jury will be instructed that they are not to consider it in any way except to illustrate the evidence of the witness.

That is all.

Mr. HARLAN. We rest.

Mr. TOZIER. We rest.

Evidence closed.

391 TERRITORY OF ALASKA,
Town of Fairbanks, ss:

I hereby certify that the foregoing is a true and correct transcript of the testimony taken by me in the above-entitled case.

G. A. JEFFERY,
Official Stenographer.

392 (Endorsements:) In the district court, Territory of Alaska, Third Division. United States of America, plaintiff, vs. Vuko Perovich, defendant. No. 104, criminal. Bill of exceptions. Filed in the district court, Territory of Alaska, Third Division, Dec. 2, 1905. E. J. Stier, clerk. By E. A. Henderson, deputy.

393 This concluded the testimony, and the foregoing constitutes all the testimony in the case.

After the evidence was concluded, the defendant requested that the court give to the jury the following instructions on the points of law therein embraced therein:

(Copy.)

394 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT.	Trial upon indictment for murder in the first degree.

Instructions to jury requested by defendant.

Defendant requests the jury be instructed in part as follows:

Section 3. "Murder, first degree: That whoever, being of sound memory and discretion, purposely and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate any rape, arson, robbery, or burglary, kills another is guilty of murder in the first degree, and shall suffer death."

Before you can find the defendant guilty of murder in the first degree the evidence must satisfy you beyond a reasonable doubt:

1. That Jacob Jaconi is dead.
2. That he was killed by defendant.
3. That defendant is of sound memory and discretion.
4. That he killed him purposely.
5. That he killed him deliberately, and with premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate any rape, arson, robbery, or burglary.

If these five propositions have not been proved to you beyond a reasonable doubt, you can not find the defendant guilty of murder in the first degree.

Defendant's request: This page of instructions refused. Aug. 3, 1905. James Wickersham, district judge. Already covered.

Defendant's request: This page of instructions refused. Aug. 3, 1905. James Wickersham, district judge. Already covered.

395 Sec. 5. "Murder in the second degree: That whoever purposely and maliciously kills another, is guilty of murder in the second degree, and shall be imprisoned in the penitentiary not less than fifteen years."

Before you can find the defendant guilty of murder in the second degree, the evidence must satisfy you beyond a reasonable doubt:

1. That Jacov Jacone is dead.
2. That he was killed by defendant.
3. That defendant killed him purposely and maliciously.

If these three propositions have not been proved to you beyond a reasonable doubt, you cannot find the defendant guilty of murder in either the first or second degree.

Sec. 6. "Manslaughter: That whoever unlawfully kills another, is guilty of manslaughter, and shall be imprisoned in the penitentiary not more than twenty nor less than one year."

Before you can find the defendant guilty of manslaughter, the evidence must satisfy you beyond a reasonable doubt:

1. That Jacov Jacone is dead.
2. That Jacov Jacone was killed by the defendant.
3. That defendant killed him unlawfully.

If these propositions have not been proven to you by the evidence beyond a reasonable doubt, you cannot find the defendant guilty of murder in the first or second degree, or of manslaughter.

396 Every killing of a human being is unlawful, when neither justifiable or excusable.

Sec. 11. "When killing of a human being justifiable: That the killing of a human being is justifiable when committed by public officers or those acting in their aid and assistance and by their command, either:

"First. In obedience to the judgment of a competent court.

"Second. When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty.

"Third. When necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued, or

"Fourth. When necessarily committed in arresting a person fleeing from justice who has committed a felony."

Sec. 12. "That the killing of a human being is also justifiable when committed by any person as follows:

"First. To prevent the commission of a felony upon such person or upon his or her husband, wife, parent, child, master, mistress, or servant.

"Second. To prevent the commission of a felony upon the property of such person, or upon property in his possession, or upon or in any dwelling house where such person may be.

"Third. In the attempt, by lawful ways and means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace."

Section 13. "When killing of a human being excusable: "That the killing of a human being is excusable when committed:

"First. By accident or misfortune in lawfully correcting a child. Or in doing any other lawful act, by lawful

Defendant's request: This page instructions refused. Aug. 3, 1905. James Wickersham, judge. Already covered.

Defendant's request: This page instructions refused. Aug. 3, 1905. James Wickersham, district judge. Already covered.

397 means, with usual and ordinary caution, and without any unlawful intent, or

"Second. By accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon a sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel or unusual manner.

It is a general rule not to convict unless the corpus delicti can be established—that is, until the fact that the crime has been actually perpetrated has been first proved; hence, on a charge of homicide, the accused should not be convicted unless the death be first distinctly proved, either by direct evidence of the fact or by inspection of the body. Corpus delicti means the body of the offence; the essence of the crime. There must be clear and unequivocal proof of the corpus delicti. It is the established rule that the facts which formed the basis of the corpus delicti are to be proved either by direct evidence or by circumstancial evidence of the most cogent and irresistable kind. Corpus delicto does not mean simply the dead body itself; it involves the element of crime, and, upon a charge of homicide, producing the dead body does not establish the corpus delicti; it would simply establish the corpus. And in a case of felonious homicide the corpus delicti consists of two substantial fundamental facts: First, the fact of the death of the deceased; and, second, the fact of the existence of criminal agencies as the cause of the death. In all trials for crime the prosecution must prove to the satisfaction of the jury, and beyond a reasonable doubt, the corpus delicti.

The law, where a criminal cause is tried, before a jury, contemplates the concurrence of twelve minds in the

398 conclusions of guilt before a conviction can be had.

The juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can under his oath consent to a verdict of guilty; and if any of the jury, after having duly considered all the evidence and after having consulted with his fellow jurymen, entertain such reasonable doubt, the jury can not, in such case, find the defendant guilty.

A doubt is an effluxion or uncertainty of mind arising from defect of knowledge, or of evidence and a doubt of guilt of the accused, honestly entertained, is a reasonable doubt. Each juror is to act upon his own judgment, and if he entertains a reasonable doubt, is not required to surrender his conviction, and render a verdict merely because the other jurors entertain no such doubt; but before conviction can be had, the jury must be satisfied from the evidence, beyond reasonable doubt, that the defendant is guilty in manner and form as charged. The burden of proof is on the Government and the defendant is entitled to reasonable doubt. And this burden continues when testimony of defendant renders doubtful any inferences or presumptions in favor of the Government.

The fact of an accused having passed by or having been seen near the premises where the remains of a human being were found, about the time the crime is supposed to have been committed, raises no presumption of the guilt of the accused.

The fact that Jacov Jacone has not been seen since the 28th day of October, 1904, does not create a presumption of his death.

In homicide the fact of death should be shown, either by witnesses who were present when the murderous act was done, or by proof of the body having been seen dead; or at all events that fragments of it, if in a state of

Defendant's request: This page of instructions refused. Already covered. Aug. 3, 1905. James Wickersham, district judge.

Defendant's request: This page instructions refused. Aug. 3, 1905. James Wickersham, district judge. Already covered.

399 decomposition or disintegration, should be identified.

Respectfully submitted.

(Signed.) LEROY TOZIER,
Atty. for Defendant.

(Endorsements:) Filed in the U. S. district court, division of Alaska, 3rd division, Aug. 2, 1905. E. J. Stier, Clerk.

400 And the court refused to give any of the instructions requested by the defendant.

To which said ruling of the court counsel for defendant then and there duly excepted, and hereby tender this, their bill of exceptions, to the court to sign and seal, and the court does hereby sign and seal the same.

The case was then argued to the jury by counsel for the respective parties.

After the argument the court gave to the jury the following written charges and instructions, which were taken by the jury in their retirement:

401 In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT.	No. 104. Instructions to the jury.

Given Aug. 3d, 1905. James Wickersham, district judge.

GENTLEMEN OF THE JURY: The defendant in this case is accused by the indictment and now on trial before you for the crime of murder in the first degree. The indictment charges that Vuko Perovich, in the Territory of Alaska, Third Division thereof, and within the jurisdiction of this court, to wit, near the town of Fairbanks, therein, on the 29th day of October, A. D. 1904, unlawfully, wilfully, feloniously, purposely, and of deliberate and premeditated malice, killed one Jacob Jaconi by means unknown to the grand jury, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

It is your duty to determine from the evidence in this case whether the accused did kill Jacob Jaconi or not; and if you shall find and believe from the evidence in this case beyond a reasonable doubt that at the time and place mentioned in the indictment he did voluntarily kill the said Jacob Jaconi, you should further determine from the evidence under the instructions of the court whether he is guilty of the crime charged in the indictment, or a lower degree thereof, or of any crime necessarily included therein, or whether he was justified or excused by law in so killing him and is therefore not guilty.

Your duty to society and to this defendant requires each of you to give your most earnest and careful con-

Given August 3, 1905. James Wickersham, district judge.

402 sideration to every feature of the case, so that the prisoner may not be unjustly convicted nor unworthily acquitted. Under the solemnity of your oaths as jurors, you must consider all the evidence in the case, and under the instructions and the law given to you by the court, and upon the law and the evidence you must reach, if you can, the just verdict which the law and the rights of this defendant demand of you.

In a criminal case the jury and the judge of this court have each important though separate functions to perform. It is your duty to hear all the evidence, all of which is addressed to you, and thereupon to decide all questions of fact. It is the duty of the judge of this court, upon the other hand, to decide all questions of law involved in the trial of this case, and to instruct you upon the law applicable to the facts and evidence in the case, and the statute makes it your duty to accept as law what is laid down as such by the court.

Sometimes it is attempted to introduce testimony which, for legal reasons, the court refuses to permit. You are instructed that you should not consider any such matter, nor any knowledge or information known to you not derived from the evidence given by the witnesses on the witness stand in reaching your verdict. You should not allow either prejudice or sympathy to swerve you in reaching a verdict according to the evidence and the law as given to you by the court; what is justified and demanded by the law and the evidence that you should do as you have sworn you would. The character and degree of the penalty in case of a conviction is to be determined by the court, within the limits fixed by law, and you are instructed that you should not consider the matter of the penalty further than you are hereinafter particularly instructed upon that question.

You are instructed that the defendant in this case is pre-

403 sumed to be innocent of the charge against him, or of any charge included therein, until he is proven to be guilty beyond a reasonable doubt by the evidence produced before you. This presumption of innocence remains with the defendant and should be given full force and effect until such time in the progress of the trial as you are convinced of his guilt from the evidence beyond a reasonable doubt.

The term "reasonable doubt" is often used, probably well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. A reasonable doubt is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they can not feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proven guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, as it mostly depends upon consideration of a moral nature, it would exclude circumstantial evidence altogether.

There is some evidence in this case that the defend-

Given August 3d, 1905. James Wickersham, district judge.

404 ant made oral admissions to persons who have appeared as witnesses and testified to the same. You are instructed that, owing to the infirmity of the human mind and the inability of witnesses to repeat the exact language used by the defendant and understand it correctly and repeat it with its intended meaning, you are to view all evidence in relation to such oral admissions so alleged to have been made by the defendant with caution; but if you shall find and believe from the evidence beyond a reasonable doubt, that the oral admissions were so made by the defendant as testified by the witnesses, you should consider them as candidly and fairly as any other evidence in the case.

You are instructed that in considering the evidence in this case you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses when their evidence does not produce conviction in your mind against a less number of witnesses or other evidence which is satisfying to your mind. The weight of evidence does not depend so much upon the number of witnesses who testify as upon the character and probability of the facts stated and upon the character and reasonableness of the testimony and the opportunity the witness had of seeing and knowing the facts stated by him.

You are instructed that you are the sole judges of the credibility of all witnesses appearing before you and of the reasonableness and probability of their testimony, and the law makes it my duty to instruct you that a witness who is wilfully false in one part of his testimony may be distrusted by you in other parts; and if you find and believe from the evidence in this case beyond a reasonable doubt that any witness who has testified in this case has testified falsely in one part of his testimony, you are at liberty to reject all or

Given August 3d, 1905. James Wickersham, district judge.

405 any part of his testimony, but you are not bound to do so. You should reject the false part and should give such weight to other parts as you think they are justly entitled to receive. You should not fail to weigh and consider fairly and give proper effect to all evidence in the case which you consider truthful and not false. In determining as to the credit you will give to a witness and the weight and value you will attach to a witness's testimony you should take into consideration the conduct and appearance of the witness upon the witness stand; the interest of the witness, if any, in the result of the trial; the motive of the witness in testifying; the witness's relation to or feeling for or against the defendant; the probability or improbability of the witness's statement; the opportunity the witness had to observe and be informed as to the matters respecting which such witnesses gave testimony and the inclination of the witness to speak the truth or otherwise as to matters within the knowledge of such witness. All these matters being taken into account, with all the other facts and circumstances given in evidence, it is your province to give to each witness such credit and the testimony of each witness such value and weight as you deem proper.

You are instructed that by the law of Alaska a person charged with the commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury under the instructions of the court. You are instructed that in this case the credit to be given to the testimony of the defendant is left to you. You should consider it as you do the testimony of other witnesses in the case. The fact that he is the defendant is not of itself sufficient to impeach or discredit his testimony, though you are entitled to take into consideration his interest in the event of the prosecution in determining his credibility.

Given Aug. 3, 1905. James Wickersham, dist. judge.

406 You are instructed that every criminal charge involves two distinct propositions: (1) That a criminal act has been committed; (2) that the guilt of such act attaches to the particular person charged with the commission of the offence. Each of these facts must be proven beyond a reasonable doubt, either by direct testimony or by presumptive evidence of the most cogent or irresist*able* kind. The proof in both cases must be clear and distinct, but it is not necessary that it should be direct and positive, both facts may be established by circumstan*c*ial evidence. And in this case you are instructed that there are two distinct propositions involved in the charge against the defendant, both of which you must find beyond a reasonable doubt against the defendant before you can find him guilty. The first is that the criminal act of hom*o*cide has been committed by the killing of Jacob Jaconi; and the second is that the defendant killed him at the time and place mentioned in the indictment. Each of these acts must be proved beyond a reasonable doubt, either by direct testimony or circumstan*c*ial evidence of the most cogent and irresist*a*ble kind. You are instructed that both these facts may be established by circumstan*c*ial evidence.

The law in regard to circumstan*c*ial evidence is this: In order to justify a jury in finding a verdict of guilty, based entirely on circumstan*c*ial evidence, the circumstances must not only be consistent with the guilt of the defendant, but they must be inconsistent with any other reasonable hypothesis that can be predicated on the evidence; or, stated in another form, it is not sufficient that the circumstances proved coincide with, account for, and therefore render probable, the hypothesis of guilt asserted by the prosecution, but they must exclude to a moral certainty and beyond a reasonable doubt every other hypothesis but the single one

Given Aug. 3rd, 1905. James Wickersham, dist. judge.

407 of guilt, or the jury must find the defendant not guilty. In order to warrant a conviction of crime on circumstancial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence beyond a reasonable doubt. All the facts necessary to the conclusion must be consistent with each other and with the main fact sought to be proved; and the circumstances, taken together, must be of a conclusive nature, leading on the whole to satisfactory conclusion, and producing, in effect, a reasonable and moral certainty that the defendant, and no other person, committed the offense charged; and unless the evidence does so it will be your duty to acquit the defendant. So, gentlemen, you will observe that there is nothing very peculiar or hard to understand about this doctrine of circumstancial evidence. The jury, in the first place, must determine from the testimony of the witnesses what are the facts and circumstances in the case—the facts and circumstances which you believe have been established by the testimony; and then you simply apply your common sense and judgment to a consideration of what deductions or inferences or conclusions ought to be drawn from these facts. And if on consideration of all the facts which you may believe to have been established by the evidence you are satisfied in your own minds, beyond all reasonable doubt, that the defendant is guilty, then it is your duty to so declare; but if you are not so satisfied it will be your duty to render a verdict of not guilty.

Given Aug. 3d, 1905. James Wickersham, dist. judge.

408 MURDER IN THE FIRST DEGREE.

Given Aug. 3rd, 1905. James Wickersham, dist. judge.

You are instructed that whoever, being of sound memory and discretion, purposely and of deliberate and premeditated malice kills another, is guilty of murder in the first degree.

In this degree of felonious homicide you must find from the evidence beyond a reasonable doubt that the defendant committed the act, and that it was done purposely and of deliberate and premeditated malice. If either of these elements be absent, there can not be a conviction for murder in the first degree. "Purposely," as used in the statute and in those instructions means intentionally; "deliberate and premeditated malice" means that kind of malice resulting from thought and reflection; it is intentional. Premeditated malice is where the intention to take life unlawfully, without legal cause or excuse, is deliberately formed in the mind and that determination meditated upon before the fatal stroke is given. There need be no appreciable space of time between the formation of the intent to kill and the killing itself; it may be as instantaneous as successive thought; it is only necessary that the act of killing should have been preceded by the concurrence of will, deliberation, and premeditation on the part of the slayer.

Before you can find the defendant guilty of murder in the first degree, you must also and further find from the evidence, beyond reasonable doubt, that he killed the deceased, Jacob Jaconi, and that he was then a man of sound memory and discretion and a sane and responsible person.

A person is presumed to intend the natural consequences of his own act. One who performs an act which it is known will produce a particular result is, from our common experiences, presumed to have anticipated that result and intended it. From that you have the right to say, and the law says, that, where a homicide is committed by

409 weapons indicating a design it is not necessary that such design existed before the fatal blow was given. From the mere fact that the fatal blow was given you have the right to infer as a presumption that the result which followed was intended prior to the striking of the blow. From this and all other facts presented in evidence you must ascertain if, at the time of the killing, the accused had formed an intention to kill the deceased, Jacob Jaconi, without having a lawful excuse or justification; if you find that he did kill the said Jacob Jaconi with that intent you will be justified in finding that it was done with premeditated malice. If you then find and believe from the evidence in this case beyond a reasonable doubt that the accused, Vuko Perovich, did at the time and place mentioned in the indictment, being then of sound memory and discretion and a sane and reasonable person, purposely and of his premeditated and deliberate malice, killed the said deceased, Jacob Jaconi, you should find him guilty of murder in the first degree.

Given August 3d, 1905. James Wickersham, dist. judge.

MURDER IN THE SECOND DEGREE.

You are instructed that the crime of murder consists of two degrees, first and second, and that it is the law that upon an indictment for a crime consisting of different degrees the jury may find the defendant not guilty of the degree charged in the indictment and guilty of any inferior degree thereof; you are instructed, however, that this is not an arbitrary power or right upon your part, to be exercised or withheld at pleasure, but it is a legal duty to be exercised in strict conformity with the rules of law. In this case, if the evidence is such as convinces you, beyond a reasonable doubt, that the defendant is guilty of the crime of murder in the first degree, as heretofore explained to you, then you have no right to refuse to convict for that degree either through sympathy or otherwise and to return a ver-

Given August 3d, 1905. James Wickersham, dist. judge.

410 dict of a lesser degree or of a lower offence. It is the duty of the prosecution to prove every necessary allegation of crime beyond a reasonable doubt; but if that is once done it is equally your duty to give full effect to that evidence and render your verdict accordingly.

You are instructed that whoever purposely and maliciously, but without deliberate and premeditated malice, kills another is guilty of murder in the second degree. In this degree of felonious homicide the evidence must show beyond a reasonable doubt that the defendant did kill Jacob Jaconi at the time and place mentioned in the indictment, and that he did it purposely and maliciously, and that at the time he was sane and a responsible person. If either of these elements be absent, there can be no conviction for murder in the second degree. "Purposely," as used in these instructions and the law means "intentionally." "Maliciously" means that it was done wrongfully and intentionally and without lawful cause or legal excuse or justification. If you shall find and believe from the evidence in this case, beyond a reasonable doubt, that, at the time and place mentioned in the indictment in this action, the defendant, Vuko Perovich, being then a sane and responsible person, did then and there purposely and maliciously kill the said Jacob Jaconi under such circumstances as not to constitute murder in the first degree, then you shall find him guilty of murder in the second degree.

411 MANSLAUGHTER.

You are further instructed that while the defendant in this case is charged in the indictment with murder in the first degree, the law provides that in all cases the defendant may be found guilty of any crime the commission of which is necessarily included within that which he is charged in the indictment; and you are instructed that the crime of manslaughter is necessarily included within the crime of murder in the first degree.

You are instructed that your power to find the defendant guilty of the lesser offense necessarily included within the greater is not an arbitrary power, to be exercised or withheld at your pleasure, but is a duty to be exercised by you in strict conformity with the rules of law. In this case, if you are convinced by the evidence, beyond a reasonable doubt, that the defendant is guilty of either murder in the first degree or murder in the second degree, as heretofore defined to you in these instructions, it is your duty to return that verdict, and you would have no right to find the defendant guilty of manslaughter in such event.

You are instructed that whoever unlawfully kills another, except under such circumstances as constitute murder either in the first or second degree, is guilty of manslaughter.

You are instructed that the law of Alaska declares that the killing of one person by another is sometimes excusable and justifiable, and it defines nine classes of such lawful and excusable killing. You are instructed that the killing of a human being is justifiable, and therefore lawful, when committed by public officers and those coming to their aid and assistance or by their command, either (1) in obedience to the judgment of a competent court; (2) when necessarily committed in overcoming resistance to the execution

Given August 3d, 1905. James Wickersham, dist. judge.

Given August 3d, 1905. James Wickersham, dist. judge.

412 of legal process or to the discharge of a legal duty; (3) when necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued; or (4) when necessarily committed in arresting a person fleeing from justice who has committed a felony. You are instructed that the killing of a human being is also justifiable, and therefore lawful, when committed by any person as follows: (5) To prevent the commission of a felony upon such person, or upon his or her husband, wife, parent, child, master, mistress, or servant; (6) to prevent the commission of a felony upon the property of such person or upon property in his possession, or upon or in any dwelling house where such person may be; (7) in the attempt by lawful ways and means to arrest a person who has committed a felony, or in a lawful attempt to suppress a riot or preserve the peace. You are further instructed that the killing of a human being is excusable, and therefore not unlawful, when committed (8) by accident or misfortune in lawfully correcting a child or in doing any other lawful act by lawful means with usual and ordinary caution and without any unlawful intent; or (9) by accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon a sudden combat without premeditation and undue advantage being taken and without any dangerous weapon or thing being used, and not done in a cruel and unusual manner.

You are instructed that any other killing of one person by another than those which are justifiable and excusable as particularly described in the above nine classes, is an unlawful killing, and if you shall find and believe from the evidence in this case, beyond a reasonable doubt, that the defendant, at the time and place mentioned in the indictment in this action, and being then a sane and responsible person, did kill the said Jacob Jaconi, under circumstance

413 not *being* bringing it within one or more of the above-described nine classes, then you are instructed that such killing constitutes either murder in the first degree, murder in the second degree, or manslaughter, and you should return your verdict accordingly and in pursuance to the instructions hereinabove given you.

If you shall find and believe from the evidence in this case, beyond a reasonable doubt, that at the time and place mentioned in the indictment the defendant, Vuko Perovich, being then a sane and responsible person, did unlawfully kill the said Jacob Jaconi, not constituting either murder in the first degree or murder in the second degree, but did kill him unlawfully, then you should find him guilty of manslaughter.

The defendant in this case is accused by the grand jury and is on trial for the crime of murder in the first degree for the alleged killing of Jacob Jaconi at the time and place mentioned in the indictment. To this charge the defendant has pleaded not guilty. You are instructed that such a plea puts the burden of proof upon the prosecution to make out every material part of the charge against the defendant, and until the prosecution proves every material matter constituting the crime charged against him, or of a lesser degree or a crime included therein, beyond reasonable doubt, the defendant is entitled to the continued benefit of the presumption of his innocence.

If you shall find and believe from the evidence in this case, beyond a reasonable doubt, that the defendant killed the said Jacob Jaconi under such circumstances as make it murder either in the first or second degree, and there is reasonable ground for doubt in which degree—first or second—he is guilty, he can be convicted of the lesser or second degree only; and if you shall find and believe from the evidence, beyond a reasonable doubt, that he killed the

Given August 3d, 1905. James Wickersham, dist. judge.

414 said Jacob Jaconi under such circumstances as to not constitute murder in the first degree, but constitute either murder in the second degree or manslaughter, and there is reasonable ground for doubt whether the crime is murder in the second degree or manslaughter, then he can be convicted of the lesser, or manslaughter, only. You are instructed, however, that this power of fixing the degree of the crime is not an arbitrary one to be exercised by you or withheld at your pleasure, but is a legal and solemn duty which you owe both to the Government and to the defendant, and one which should be exercised by you in strict conformity with the rules of law given you in these instructions. If, from the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you should say so by your verdict. If you are convinced beyond a reasonable doubt that he is guilty of murder in the second degree only, you should say so in your verdict; if you are satisfied from the evidence, beyond a reasonable doubt, that he is guilty of manslaughter only, you should say so by your verdict; if you are not convinced beyond a reasonable doubt that he is guilty of either one or the other of those offences, or if you have a reasonable doubt upon the question, then you should find him not guilty.

You are instructed that there are lesser offences, and attempts necessarily included in the charge contained in the indictment in this case, but you are instructed that if a felonious homicide has been committed in this case, of which you are to be the judges, there is nothing in this case to reduce it below the crime of manslaughter, and under the evidence in this case you should either find the defendant guilty of murder in the first degree or guilty of murder in the second degree, or guilty of manslaughter, or not guilty.

You are instructed that the law of Alaska provides that in all cases when any person accused is found guilty of

Given August 3d, 1905. James Wickersham, dist. judge.

murder in the first degree, the jury may qualify their verdict by adding thereto the words, " without capital punishment," and that whenever a jury returns a verdict o qualified the person shall be sentenced to imprisonment at ard labor for life, and that if you return a verdict of mur- er in the first degree without so qualifying it, the penalty hall be death.

In conformity with the law I have provided five forms of erdict, which you will take with you into the jury room, and hen you shall have unanimously agreed upon your verdict ou will sign, by your foreman, that form on which you gree, and return it into court as your verdict, and the other orms you will destroy. The forms are: (1) Murder in the rst degree; (2) murder in the first degree qualified by the dded words " without capital punishment;" (3) murder in ie second degree; (4) manslaughter; (5) not guilty. With ese forms I now hand you the written instructions which I ave read to you for your guidance, and you may take them ith you into the jury room and will return them with your erdict into this court. You may now retire in charge of ie marshal to consider your verdict.

Dated at Fairbanks, Alaska, this 3rd day of August, 1905.

(Signed) JAMES WICKERSHAM,
District Judge.

Given August 3d, 1905. James Wickersham, dist. judge.

(Endorsements:) Filed in the U. S. District Court, Dis- ict of Alaska, 3rd Division, Aug. 3, 1905. E. J. Stier, lerk.

To which said charge of the court defendant, by his counsel, then and there and before the jury retired presented and made e following exceptions:

In the District Court for the Territory of Alaska.

NITED STATES OF AMERICA
vs.
VUKO PEROVICH. } No. 104. Criminal.

Defendant's exceptions to charge to jury.

The defendant excepts to the ruling of the court to the effect that eptions to his instructions to the jury in this case should be taken this time in the presence of the jury, and to the refusal of the court allow defendant additional time in which to prepare his excep- ns to said instructions, for the reason that such ruling is contrary law and prejudicial to the rights of the defendant.

The defendant excepts to the refusal of the court to give to the jury instructions requested by the defendant upon the matter of the

proof of the corpus delicti, and the defendant also excepts to the refusal of the court to give to the jury in this case the instructions offered and requested by the defendant upon the question and regarding the matter of reasonable doubt in this case.

The defendant excepts to the instructions of the court to the jury in this case upon the question and regarding the matter of reasonable doubt, for the reason that such instructions so given by the court are contrary to law, and do not state the law, and are prejudicial to the rights of defendant.

The foregoing exceptions are hereby allowed.

JAMES WICKERSHAM, *Judge.*

And the defendant hereby tenders this his bill of exceptions to the court to sign and seal, and the court does hereby sign and seal the same.

(Endorsements:) United States of America, plaintiff, vs. Vuko Perovich, deft. Criminal, No. 104. Defendant's exceptions to court instructions to jury. Filed in the District Court, Territory of Alaska, Third Division, August 5, 1905. E. J. Stier, Clerk.

418 The jury then retired, and after a time returned into court with a verdict of guilty.

Thereupon, within the time allowed by law and the order of the court, the defendant filed his motion in arrest of judgment and his motion for a new trial, as follows:

419 In the District Court of the Territory of Alaska.

THE UNITED STATES OF AMERICA *vs.* VUKO PEROVICH. } No. 104. Criminal. Motion in arrest of judgment.

Come now the defendant in the above-entitled action and moves the court that no judgment be rendered in this case upon the verdict herein against the defendant, for the reason that the indictment in this case does not state facts sufficient to constitute a crime.

HEILIG & TOZIER, and
JOHN F. DILLON,
Attys. for Deft.

(Endorsements:) Due and legal service hereof, and a copy of the above motion is hereby accepted this 5th day of August, 1905. Nathan V. Harlan, U. S. attorney.

District Court, Territory of Alaska, Third Division, United States of America *vs.* Vuko Perovich. Motion in arrest of judgment. Filed in the U. S. District Court, District of Alaska, 3rd Division, Aug. 5, 1905. E. J. Stier, clerk.

420 In the District Court for the Territory of Alaska.

THE UNITED STATES OF AMERICA *vs.* VUKO PEROVICH. } No. 104. Criminal. Motion for new trial.

Comes now the defendant in the above-entitled action and moves the court to set aside the verdict of the jury herein and to grant him a new trial upon the following grounds, to wit:

1. That the evidence in this case is not sufficient to justify the verdict found and returned by the jury in this case, and that said verdict is against the law.

2. Errors in law occurring at the trial of this cause and excepted to by the defendant.

3. Irregularities in the proceedings of the court and the adverse party, and abuse of discretion on the part of the court by which the defendant was prevented from having a fair trial.

HEILIG & TOZIER, and
JOHN F. DILLON,
Attorneys for Defendant.

(Endorsements:) Due and legal service of the above motion and of a copy thereof is hereby accepted this 5th day of October, 1905. Nathan V. Harlan, U. S. attorney.

District Court, Territory of Alaska, Third Division, No. 104, Criminal, United States of America *vs.* Vuko Perovich. Motion for new trial. Filed in the U. S. District Court, District of Alaska, 3rd Division, Aug. 5, 1905. E. J. Stier, clerk.

421 Which motion in arrest of judgment and motion for new trial the court overruled.

To which said rulings of the court counsel for defendant then and here duly excepted and hereby tender this their bill of exceptions to the court to sign and seal, and the court does hereby sign and seal the same.

422 UNITED STATES OF AMERICA,
District of Alaska, ss:

I, James Wickersham, judge of the district court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing contains a full, true, and correct transcript of all the evidence introduced at the trial of the said cause of The United States of America vs. Vuko Perovich, and correct copies of the exceptions to instructions, motion in arrest of judgment, and motion for a new trial, as on file; and I do hereby allow and sign and seal this as and for a true bill of exceptions and order the same to be filed as a part of the record.

In testimony whereof I have hereunto set my hand and seal this 13th day of September, 1905.

JAMES WICKERSHAM.

423 District Court, Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT.	No. 104. Criminal. Petition for writ of error in forma pauperis and supersedeas.

Vuko Perovich, defendant in the above-entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 15th day of September, 1905, comes now by Leroy Tozier and John F. Dillon, his attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided; that defendant be allowed to perfect this appeal without filing a bond as required by law and without costs and fees of the clerk or other officers of this court, upon his affidavit made and filed in this cause according to law; that all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Your petitioner respectfully states that he has this day filed herewith his assignment of errors committed by the court below in said cause, and intended to be urged by your petitioner and plaintiff in error in the prosecution of this his suit in error.

Dated December 2, 1905.

LEROY TOZIER,
JOHN F. DILLON,
Attorneys for Vuco Perovich, plaintiff in error.

(Endorsement:) Filed in the District Court, Territory of Alaska, 3rd Division, Dec. 2, 1905. E. J. Stier, clerk. By E. A. Henderson, deputy.

424 District Court, Third Division, Territory of Alaska.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT.	No. 104. Criminal. Affidavit for prosecution of writ of error in forma pauperis.

UNITED STATES OF AMERICA,
District of Alaska:

Vuko Perovich, of Fairbanks, Alaska, being duly sworn, makes oath and says:

That he is the defendant above named, and has filed his petition for a writ of error to the Supreme Court of the United States, feeling himself aggrieved by the verdict of the jury and the judgment entered in the above-entitled cause in said District Court;

That deponent believes that he is entitled to the redress sought to be obtained by his suit in error and has good grounds for his said appeal to the United States Supreme Court;

That by reason of his poverty this deponent is unable to pay or secure the costs of prosecuting his said suit in error.

This deponent therefore prays that he may have leave to prosecute said suit in forma pauperis, pursuant to the statute in that case made and provided.

VUKO PEROVICH.

Subscribed and sworn to before me this 1st day of Dec., 1905.

[SEAL.] EDWARD J. STIER,
Clerk U. S. District Court for the District of Alaska, Third Division.

(Endorsed:) Filed in the District Court, Territory of Alaska, 3rd Division, Dec. 2, 1905. E. J. Stier, clerk. By E. A. Henderson, deputy.

425 District Court, Third Division, Territory of Alaska.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* VUKO PEROVICH, DEFENDANT. } No. 104. Criminal. Order allowing writ of error in forma pauperis.

Upon reading the petition and affidavit of defendant herein, it is now ordered that a writ of error in the above-entitled cause issue, as prayed for in the petition, without costs or fees of clerk or other officer of this court, and without filing the necessary bonds on appeal.

JAMES WICKERSHAM,
District Judge, Third Division, Territory of Alaska.

(Endorsement:) Filed in the District Court, Territory of Alaska, 3rd Division. Dec. 2, 1905. E. J. Stier, clerk. By E. A. Henderson, deputy.

426. In the District Court for the Territory of Alaska, Third Division.

THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR, *vs.* VUKO PEROVICH, PLAINTIFF IN ERROR.

Assignment of errors.

The plaintiff in error respectfully shows that at the trial of the said cause in the said court at Fairbanks, Alaska, commencing on August 1, 1905, errors affecting his substantial rights appear in the record and proceedings thereof in the following matters:

1. The court erred in overruling the following motion made by defendant when plaintiff rested its case:

"Defendant moves the court to now instruct the jury to bring in a verdict of not guilty against this accused for the reason that the corpus delicti has not been proved; that the evidence adduced on the trial is not sufficient to justify a verdict of guilty against this defendant; that if anything has been proved by the prosecution it is simply corpus alone; that the evidence in no way connects this defendant with the death of Jacob Jaconi or anyone else; that the

evidence as adduced by the trial does not support the indictment as returned by the grand jury, and that the law and the evidence will not support a conviction."

2. The court erred in overruling the following motion, made by defendant when plaintiff rested its case:

"Defendant moves that the evidence given by George Dreibelbis, deputy marshal, regarding a conversation held with the accused after his arrest, the conversation that was held with him by George Dreibelbis on the trail, the conversation that was held between George Dreibelbis and the accused at the time Edgar Wickersham was present, and that all conversations held with the defendant by George Dreibelbis be stricken from the record."

3. The court erred in refusing to appoint an interpreter when the defendant Vuko Perovich was called as a witness and during the time he was testifying, upon the request of his counsel that an interpreter be appointed.

4. The court erred in overruling defendant's motion in arrest of judgment.

5. The court erred in overruling defendant's motion for a new trial upon all the grounds therein stated.

427 6. The court erred in its refusal to give the following instruction to the jury as requested by defendant:

"It is a general rule not to convict unless the corpus delicti can be established—that is, until the fact that the crime has been actually perpetrated has been first proved; hence, on a charge of homicide, the accused should not be convicted unless the death be first distinctly proved, either by direct evidence of the fact or by inspection of the body. Corpus delicti means the body of the offence—the essence of the crime. There must be clear and unequivocal proof of the corpus delicti. It is the established rule that the facts which formed the basis of the corpus delicti are to be proved either by direct evidence or by circumstantial evidence of the most cogent and irresistible kind. Corpus delicti does not mean simply the dead body itself; it involves the element of crime, and, upon a charge of homicide, producing the dead body does not establish the corpus delicti; it would simply establish the corpus. And in a case of felonious homicide the corpus delicti consists of two substantial facts: First, the fact of the death of the deceased, and, second, the fact of the existence of criminal agencies as the cause of the death. In all trials for crime the prosecution must prove, to the satisfaction of the jury and beyond a reasonable doubt, the corpus delicti."

7. The court erred in its refusal to give the following instruction to the jury as requested by defendant:

"The law, where a criminal case is tried before a jury, contemplates the concurrence of twelve minds in the conclusion of guilt before a conviction can be had. The juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can, under his oath, consent to a verdict of guilty, and if any of the jury, after having duly considered all the evidence and after having consulted with his fellow jurymen, entertain such reasonable doubt, the jury cannot in such case find the defendant guilty."

8. The court erred in its refusal to give the following instruction to the jury as requested by the defendant:

"A doubt is an effluxion or uncertainty of mind arising from defect of knowledge or of evidence, and a doubt of guilt of the accused, honestly entertained, is a reasonable doubt. Each juror is to act upon his own judgment, and, if he entertains a reasonable doubt, is not required to surrender his conviction and render a verdict merely because the other jurors entertain no such doubt; but before conviction can be had the jury must be satisfied from the evidence beyond reasonable doubt that the defendant is guilty in manner and form as charged. The burden of proof is on the Government and the defendant is entitled to reasonable doubt. And this burden continues when testimony of defendant renders doubtful any inference or presumptions in favor of the Government."

9. The court erred in its refusal to give the following instruction to the jury as requested by defendant:

"The fact of an accused having passed by or having been seen near the premises where the remains of a human being were found about the time the crime is supposed to have been committed raises no presumption of the guilt of the accused."

428 10. The court erred in its refusal to give the following instruction to the jury, as requested by defendant:

"The fact that Jacob Jaconi has not been seen since the 28th day of October, 1904, does not create a presumption of his death. In homicide the fact of death should be shown, either by witnesses who were present when the murderous act was done, or by proof of the body having been seen dead; or at all events that fragments of it, if in a state of decomposition or disintegration, should be identified."

11. The court committed error in its charge to the jury on the subject of reasonable doubt. The part of the charge so given and hereby referred to is as follows:

"The term 'reasonable doubt' is often used, probably well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. A reasonable doubt is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence, and every person is presumed to be innocent until he is proven guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require

absolute certainty, as it mostly depends upon consideration of a moral nature, it would exclude circumstantial evidence altogether."

LEROY TOZIER and
JOHN F. DILLON,
Attys. for defendant.

(Endorsement:) Filed in the District Court, Territory of Alaska, 3rd Division, Dec. 2, 1905. E. J. Stier, clerk. By E. A. Henderson, deputy.

429 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the District Court of the United States for the Territory of Alaska, Third Division, greeting:

Because in the record and proceeding, and also in the rendition of the judgment of a plea which is in the said District Court before you, between the United States of America, plaintiff, and Vuko Perovich, defendant, a manifest error hath happened, to the great damage of the said Vuko Perovich, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, directly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the court rooms of said court in the city of Washington, District of Columbia, together with this writ, so that you have the same at the said place before the justices aforesaid on the 10th day of October next; that the record and proceedings aforesaid being inspected, the said justices of the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of December, in the year of our Lord one thousand nine hundred and five, and of the independence of the United States the one hundred and thirtieth.

[SEAL.] EDWARD J. STIER,
Clerk U. S. District Court, Territory of Alaska, Third Division.

The above writ of error is hereby allowed.

JAMES WICKERSHAM,
District Judge.

(Endorsements:) Filed in the District Court, Territory of Alaska, 3rd Division, Dec. 2, 1905. E. J. Stier, clerk, by E. A. Henderson, deputy.

430 UNITED STATES OF AMERICA, *ss:*

To Nathan V. Harlan, United States district attorney for the Territory of Alaska, Third Division, greeting:

You are hereby cited and admonished on behalf of the defendant in error to be and appear at a term of the United States Supreme

Court to be holden in the city of Washington, District of Columbia, on the 10th day of October, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Territory of Alaska, Division No. 3, wherein Vuko Perovich is the plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said District Court, this 16 day of September, in the year of our Lord one thousand nine hundred and five, and of our independence the one hundred and thirtieth.

JAMES WICKERSHAM,
Judge of the District Court of the Territory of Alaska, Third Division.

Attest:

EDWARD J. STIER,
Clerk of the District Court for the Territory of Alaska, Third Division.

Due and legal service of the foregoing citation is hereby acknowledged this 2nd day of December, 1905.

HARRY L. COHN,
Assistant United States District Attorney for the Territory of Alaska, Third Division.

(Endorsement:) Filed in the District Court, Territory of Alaska, 3rd Division, Sep. 16, 1905. E. J. Stier, clerk, by E. A. Henderson, deputy.

431 In the Supreme Court of the United States.

VUKO PEROVICH, PLAINTIFF IN ERROR, *vs.* UNITED STATES OF AMERICA, DEFENDANT in error.	Order enlarging time of return day of writ of error.

Now, on this 16th day of September, 1905, for good cause shown, the return day of the writ of error in this cause heretofore allowed by the judge of the United States District Court for the Territory of Alaska, Third Division, is hereby enlarged by the judge of said last-mentioned court to the 10th day of October, 1906.

JAMES WICKERSHAM, *Judge.*

(Endorsements:) Filed in the District Court, Territory of Alaska, 3rd Division, Sep. 16, 1905. E. J. Stier, clerk, by E. A. Henderson, deputy.

432 (Indorsement on cover:) File No. 20370. Territory of Alaska, Third Division, D. C., U. S. Term No. 405. Vuko Perovich, plaintiff in error, vs. The United States. Filed September 24th, 1906. File No. 20370.

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JAMES H. McKENNEY,
CLERK

No. 405.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

VUKO PEROVICH, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE TERRITORY OF ALASKA, THIRD DIVISION.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

VUKO PEROVICH, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 405.

MOTION TO ADVANCE.

Plaintiff in error was indicted July 18, 1905, for having, near Fairbanks, Alaska, on the 29th of October, 1904, killed one Jacob Jaconi. He was tried, convicted on August 3, 1905, and sentenced to be hanged, and has sued out this writ of error.

In accordance with the provisions of section 6 of the act of February 6, 1889 (25 Stat., 655, 656), the Solicitor-General respectfully moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the present term.

Opposing counsel in the court below have been notified of this motion.

HENRY M. HOYT,
Solicitor-General.

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FILED.
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JAMES H. McKENNEY,
CLERK.

No. 405.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

VUKO PEROVICH, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE THIRD DIVISION OF THE TERRITORY OF ALASKA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

VUKO PEROVICH, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 405.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE THIRD DIVISION OF THE TERRITORY OF ALASKA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On July 17, 1905, the plaintiff in error was indicted in the United States District Court of Alaska, Third Division, for the murder of one Jacob Jaconi near the town of Fairbanks. (R., 1.) After a trial the jury on August 5, 1905, found the defendant "guilty of murder in the first degree, and that he suffer death" (R., 15). Motions for a new trial and in arrest of judgment were denied by the court (R., 243), and on September 15, 1905, the defendant was sentenced to be hanged December 8, 1905 (R., 17). To review this judgment a writ of error was sued out from this court.

From the testimony given at the trial it appears that the deceased, who was a fisherman, lived at a fishing camp, a small log cabin covered by a tent, about midway between Fairbanks and Chena, a distance of about 4 miles from each place (R., 25); that on October 28, the last time he was seen alive, he was at Fairbanks between 1 and 2 o'clock in the afternoon (R., 58, 59), and had in his possession several nuggets, a Yukon gold ring, a gold chain and watch charm, and about $800 in money, $500 of which he deposited in a bank at Fairbanks (R., 136). About 4 o'clock in the morning of October 29 the dogs of the deceased were heard barking and two shots from a gun were heard in the direction of his cabin (R., 88). The same day at noon the deceased's partner arrived at his fishing camp and found that the cabin in which the deceased had lived had been partially destroyed by fire. Parts of it were still burning, and in the rear of the tent, where the bunk had been, he saw the back part of a head, a leg bone, and the trunk of a man. The head was sunken on the chest (R., 28). Everything in the cabin was burned except a few chips in and around the stove (R., 47, 53, 73), but the cabin was not wholly destroyed. It was, however, burned more toward the back where the bunk had been (R., 28, 51, 53, 74), and the ground at and near where the bunk had been for an area of about 5 feet and to a depth of 6 or 7 inches, was saturated with oil (R., 91, 93). It was shown that

the deceased had in his cabin between 1½ and 3 gallons of oil (R., 26, 124). The stove was to the left of the door about 8 inches from the side wall and 3 feet from the front of the cabin (R., 26, 74), and in it were some dried chips that had not been burned (R., 53). The stove was 7 to 9 feet from the back of the cabin (R., 74). There was a floor in the cabin running from the door back to the bunk, but under the bunk itself there was no floor (R., 26). Six witnesses testified that they were at the cabin either October 29 or 30, and saw the skull and other parts of the skeleton, and that they were still smoking, and that the bones were burned so that they crumbled to pieces when touched (R., 28, 37, 39, 42–47, 52, 55). Three weeks before the tent was burned the defendant, in a saloon at Fairbanks, said he was "broke" (R., 41, 42), and a week later, while in a saloon in the same place, he told another witness he was broke, but that he could get some money if he had a partner, as he knew a man who lived about 5 miles from Chena who had about $500, a watch and chain, a ring, and a gun (R., 96). At the same time the defendant made a similar statement to another witness, and asked the witness to go with him, saying that he would steal the money (R., 99–101). On October 15 defendant had been at deceased's cabin about daylight. When asked what he wanted he said he was traveling, looking for a job. He remained at the cabin for

about two hours, ate his breakfast, and then started toward Chena. When he had gone a short distance he turned and looked back, and took a short crosscut toward Fairbanks, and was seen at Fairbanks at 9 o'clock the same morning (R., 29, 30). Another witness testified that on the evening of October 20, 1904, he and the defendant went to Chena together. On the way they stopped at the cabin of deceased. Defendant went up to the door and inquired the distance to Chena, and was told it was 4 miles. He told witness that he had been there several times before; that the deceased had a roll of money—a thousand or fifteen hundred dollars—and that he would "lick him with an ax" some day and throw him in the water, or that he would make a fire and burn everything up (R., 103–105). On October 28 at 7 o'clock in the evening defendant was at Fairbanks and said he was going to the cabin of one of his countrymen to see if he could find anything in it (R., 57, 117). On October 29 between half past 3 and 4 o'clock in the afternoon he arrived at the camp about 20 miles below Chena (R., 59, 60). He wore a corduroy coat and vest, overalls, and a fur cap (R., 61). He said he had no money, clothes, or food. He had a rifle and a canvas bag (R., 62). Another witness testified that the defendant had a Yukon ring initialed "T. M." and a gold watch and chain. Defendant had said that he paid $30 for the watch and bought

the ring from a friend at Dawson for $8 (R., 66). To still another witness he tried to sell a suit of clothes which he said his brother in Dawson had given him. He also had an overcoat and many other articles of clothing (R., 68). To another witness defendant said he had won the watch in a raffle at Douglass (R., 86). He was arrested on November 5, 45 miles below Chena and at first gave his name as Charlie Mitchell. He had in his possession a twenty-dollar gold piece, a ten-dollar gold piece in a pocketbook, a twenty-dollar Canadian bill and a gold watch. Later a bag of clothes was found where he had left it. Defendant said he had traded a nugget chain with two men for the sack of clothes and the watch, and that they had given him $11.50 in money; that he and his partner had made the chain, and he had bought his partner's interest in it (R., 76, 77). The partner of the defendant, above referred to, testified that he and the defendant had owned a nugget chain and that it had never been out of his possession after it was made (R., 119). The articles above referred to, and many others which were found in defendant's possession, were identified as the property of the deceased (R., 122–139). On cross-examination the defendant admitted that the statements he had made to the different witnesses on different occasions as to the manner in which he acquired the various articles subsequently identified as having belonged to the deceased, were all false. He gave

as a reason for this that he feared that otherwise it would be thought he had stolen the articles (R., 192, 193).

ARGUMENT.

A. EXCEPTIONS TO CHARGE TO THE JURY.

The defendant excepted to the charge to the jury on the following grounds (R., 241):

> The defendant excepts to the ruling of the court to the effect that exception to his instructions to the jury in this case should be taken at this time in the presence of the jury, and to the refusal of the court to allow defendant additional time in which to prepare his exceptions to said instructions, for the reason that such ruling is contrary to law and prejudicial to the rights of the defendant.
>
> The defendant excepts to the refusal of the court to give to the jury the instructions requested by the defendant upon the matter of the proof of the corpus delicti, and the defendant also excepts to the refusal of the court to give to the jury in this case the instructions offered and requested by the defendant upon the question and regarding the matter of reasonable doubt in this case.
>
> The defendant excepts to the instructions of the court to the jury in this case upon the question and regarding the matter of reasonable doubt for the reason that such instructions so given by the court are con-

trary to law, and do not state the law, and are prejudicial to the rights of the defendant.

The second and third grounds of exception will be fully covered hereafter in connection with the argument on the assignments of error. It is, therefore, only necessary to consider the first exception at this time.

The orderly trial of criminal cases would be impossible if the rule of practice contended for in the defendant's first exception were adopted. It is settled law that exceptions to the charge should be taken before the jury retires in order that the court may correct any error that may have been made. (*Norman* v. *United States*, 20 App. D. C., 494.)

B. ASSIGNMENTS OF ERROR.

1. The action of the court in denying the following motion is assigned as error:

> The defendant moves the court to now instruct the jury to bring in a verdict of not guilty against this accused for the reason that the corpus delicti has not been proved; that the evidence adduced on the trial is not sufficient to justify a verdict of guilty against this defendant; that if anything has been proved by the prosecution it is simply corpus alone; that the evidence in no way connects this defendant with the death of Jacob Jaconi; that the evidence as adduced by the trial does not support the indictment as returned by the grand jury, and that the law and the evidence will not support a conviction.

This motion was made after the Government rested its case. It was then denied and an exception allowed. The defense then put in its evidence and the motion was not subsequently renewed.

It has been repeatedly held by this court that when after such a motion the defendant introduces testimony, an exception to the action of the court in refusing to direct a verdict is waived. (*Union Pacific R. R.* v. *Daniels*, 152 U. S., 684, and authorities there cited; *Runkle* v. *Burnham*, 153 U. S., 216, and *Hansen* v. *Boyd*, 161 U. S., 397.)

2. It is complained that the court erred in overruling the following motion made by the defendant when the Government rested its case:

> The defendant moves that the evidence given by George Dreibelbis, deputy marshal, regarding the conversation held with the accused after his arrest, the conversation that was held with him by George Dreibelbis on the trail, the conversation that was held between George Dreibelbis and the accused at the time Edgar Wickersham was present, and that all conversations that were held with defendant by George Dreibelbis be stricken from the record.

The grounds upon which this request was based were not stated. The motion, therefore, was properly overruled.

Camden v. *Doremus* (3 How., 515).
United States v. *McMasters* (4 Wall., 680).
Burton v *Driggs* (20 Wall., 125).
Toplitz v. *Hedden* (146 U. S., 252).

No objection was made to the testimony in chief of George Dreibelbis (R., 72–78). In the course of his testimony in rebuttal, counsel for defense interposed an objection whereupon the following dialogue took place:

> COURT. Upon what grounds, Mr. Tozier?
> Mr. TOZIER. It takes the form of an admission. If it is anything it is an admission and it has no place in the record.

The objection was thereupon overruled and an exception allowed (R., 216).

This objection is so vague as to render it difficult for the prosecution to cure a possible defect. It is therefore unavailing.

> *District of Columbia* v. *Woodbury* (136 U. S., 450).
> *Patrick* v. *Graham* (132 U. S., 627).
> *Wood* v. *Weimar* (104 U. S., 786).
> *Noonan* v. *Caledonia Mining Co.* (121 U. S., 393), and cases cited above.

If the foregoing statement of counsel for the defense be regarded as sufficiently specifying the ground of his objection to this testimony, then he must be held to have waived all others. (*Evanston* v. *Gunn*, 99 U. S., 660.)

The evidence shows that no threats or promises were made as an inducement to the defendant to make a statement.

An admission of a fact not in itself involving criminal intent is not to be rejected as evidence

merely because it may, when taken in connection with other facts, tend to establish guilt.

People v. *Velarde* (59 Cal., 457).
State v. *Red* (53 Ia., 69, 74).
People v. *Parton* (49 Cal., 632).
Ferguson v. *State* (31 Tex. Crim. Rep., 93).
People v. *McCallum* (103 N. Y., 587, 596).

3. Error is alleged in the refusal of the court to appoint an interpreter when the defendant was called as a witness.

No objection was taken to the ruling of the court sustaining the objection of the district attorney to the appointment of an interpreter, and it will be seen, by reference to the defendant's testimony (Rec., pp. 143–207), that an interpreter was unnecessary. The defendant evidently understood the questions that were asked him and answered them intelligently. Moreover, whether or not the appointment of an interpreter is necessary is within the sound discretion of the trial court.

Schall v. *Eisner* (58 Ga., 190).
State v. *Severson* (78 Ia., 653).

4. It is assigned as error that the court erred in overruling the defendant's motion in arrest of judgment because the indictment did not state facts sufficient to constitute a crime (R., 242).

The indictment reads as follows:

The United States of America, plaintiff, *v.* Vuko Perovich, defendant.	No. 104. Indictment.

Vuko Perovich is accused by the grand jury of the Territory of Alaska, Third Division, by this indictment, of the crime of murder in the first degree, committed as follows:

That Vuko Perovich, in the Territory of Alaska, third division thereof, and within the jurisdiction of this court, to wit, near the town of Fairbanks therein, on the 29th day of October, A. D. 1904, unlawfully, willfully, feloniously, purposely, and of deliberate and premeditated malice killed one Jacob Jaconi, by means unknown to the grand jury, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Dated at Fairbanks, in said division, the 17th day of July, A. D. 1905.

Nathan V. Harlan, United States attorney.

The indictment, which follows the language of the statute, viz:

> That whoever, being of sound mind and discretion, purposely, and either of deliberate or premeditated malice, or by means of poison * * * kills another is guilty of

> murder in the first degree, and shall suffer death,

is in accordance with the form prescribed by sections 39 and 40, chapter 7 of the Criminal Code of Alaska, and section 1 of the Appendix therein referred to (30 Stat., 1289, 1341).

The manner in which the murder was accomplished and the means employed could not be ascertained, and as it is merely matter of description the indictment is good if it states that they are unknown to the grand jury.

> *State* v. *Wood* (53 N. H., 484).
> *State* v. *Williams* (7 Jones, N. C., 446).
> *Commonwealth* v. *Ashton* (125 Mass., 384).
> *Commonwealth* v. *Martin* (125 Mass., 394).
> *Commonwealth* v. *Webster* (5 Cush., 295).
> *People* v. *Taylor* (3 Denio, 91).

5. It is claimed in the fifth assignment of error that the court erred in overruling the defendant's motion for a new trial upon the grounds therein stated.

Nothing is better settled than that a motion for a new trial is always addressed to the discretion of the court and will not be reviewed by an appellate court.

> *Addington* v. *United States* (165 U. S., 185)
> *Blitz* v. *United States* (153 U. S., 308–312).
> *Smith* v. *Mississippi* (162 U. S., 592).

6. It is alleged in the sixth assignment of error that the court erred in refusing to grant the following instruction:

> It is a general rule not to convict unless the corpus delicti can be established, i. e., until the fact that a crime has been actually perpetrated has been first proved; hence, in the charge of homicide the accused should not be convicted unless the death be first distinctly proved, either by direct evidence of the fact or by inspection of the body. Corpus delicti means the body of the offense, the essence of the crime. There must be clear and unequivocal proof of the corpus delicti. It is an established rule that the facts which form the basis of the corpus delicti are to be proved either by direct evidence or by circumstantial evidence of the most cogent and irresistible kind. Corpus delicti does not mean simply the dead body itself; it involves the element of crime; and upon a charge of homicide, producing the dead body does not establish the corpus delicti; it would simply establish the corpus. And in the case of felonious homicide, the corpus delicti consists of two substantial facts, first, the fact of the death of deceased, and, second, the fact of the existence of criminal agencies as the cause of the death. In all trials for crime the prosecution must prove to the satisfaction of the jury and beyond reasonable doubt the corpus delicti.

It is not the law that the corpus delicti "must be distinctly proved, either by direct evidence of the fact or by inspection of the body," because that would eliminate proof of the corpus delicti by circumstantial evidence.

Commonwealth v. *Webster* (5 Cush., 295).
State v. *Williams* (7 Jones (N. C.), 446).

Moreover, the defendant was not entitled to this instruction in the precise terms prayed, and the court properly refused it.

Catts v. *Phalen* (2 How., 376).
Robeson v. *Parker* (11 Appls. D. C., 132).

This prayer was also fully covered in the following part of the court's charge to the jury:

> You are instructed that every criminal charge involves two distinct propositions; first, that a crime has been committed; second, that the guilt of such act attaches to the particular person charged with the commission of the offense. Each of these facts must be proved beyond a reasonable doubt, either by direct testimony or by presumptive evidence of the most cogent and irresistible kind. The proof in both cases must be clear and distinct, but it is not necessary that it should be direct or positive; both facts may be established by circumstantial evidence, and in this case you are instructed that there are two distinct propositions involved in the charge against the defendant, both of which you must find beyond reasonable doubt against the defendant or you can not find

him guilty. The first is that a criminal act of homicide has been committed by the killing of Jacob Jaconi; and the second is that the defendant killed him at the time and place mentioned in the indictment. Each of these facts must be proved beyond a reasonable doubt, either by direct testimony or circumstantial evidence of the most cogent and irresistible kind.

And as the law was here clearly stated to the jury, it was not error to refuse the instruction.

Coffin v. *United States* (162 U. S., 664).

Grand Trunk R. R. Co. v. *Ives* (144 U. S., 408).

Erie Ry. v. *Winter* (143 U. S., 60–74).

7. The seventh assignment of error charges that the court erred in refusing to grant the following instruction:

> The law, where a criminal case is tried before a jury, contemplates the concurrence of twelve men in the conclusion of guilt before a conviction can be had. A juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can under his oath consent to a verdict of guilty, and if any juror, after having duly considered all the evidence and after having consulted with his fellow jurymen, entertain any such reasonable doubt, the jury can not in such case find the defendant guilty.

This prayer is fully covered in the following part of the court's charge to the jury:

> Your duty to society and to this defendant requires *each* of you to give your most earnest and careful consideration to every feature of the case, so that the prisoner may not be unjustly convicted or unworthily acquitted. (R., 227–228.)
>
> * * * This presumption of innocence remains with the defendant and should be given full force and effect until such time in the progress of the trial as you are convinced of guilt from the evidence beyond a reason-doubt. (R., 229.)
>
> * * * In conformity with the law I have provided five forms of verdict, which you will take with you into the jury room, and when you shall have unanimously agreed upon your verdict you will sign by your foreman that form to which you agree and return it to the court as your verdict; the other forms you will destroy. (R., 241.)

8. It is claimed in the eighth assignment of error that the court erred in refusing to grant a prayer made by the defendant on the question of reasonable doubt, and in the eleventh assignment that the court erred in its instructions to the jury upon that question.

The court charged the jury as to reasonable doubt in the following language:

> The term "reasonable doubt" is often used, probably well understood, but not

easily defined. It is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. A reasonable doubt is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they can not feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proven guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this and require absolute certainty, as it mostly depends upon consideration of a moral nature, it would exclude circumstantial evidence altogether.

This instruction is taken verbatim from the charge of Chief Justice Shaw to the jury in *Commonwealth* v. *Webster* (5 Cush., 320), and is cited with approval in *Miles* v. *United States* (103 U. S., 312).

9. The ninth assignment alleges error in the court refusing to give this instruction:

> The fact of an accused having passed by or having been seen near the premises where the remains of a human being were found about the time the crime is supposed to have been committed raises no presumption of the guilt of the accused.

The fact that the defendant was known to be near the place of the crime at the time the murder is supposed to have been committed is to be considered not separately but in connection with the other facts in the case. The court was therefore right in refusing to grant the instructions asked for.

Scott v. *Lloyd* (9 Pet., 418, 459).
Coffin v. *United States* (162 U. S., 664, 675).

10. It is complained in the tenth assignment of error that the court erred in refusing to charge the jury that—

> The fact that Jacob Jaconi has not been seen since the 28th day of October, 1904, does not create a presumption of his death. In homicide the fact of death should be shown either by witnesses who were present when the murderous act was done, or by proof of the body having been seen dead; or at all

events that fragments of it, if in a state of decomposition or disintegration, should be identified.

This is not the law, as it would exclude the proof of corpus delicti by circumstantial evidence, and is a request of the court to charge the jury upon a part of the evidence only.

It is respectfully submitted that the judgment of the District Court should be affirmed.

ALFORD W. COOLEY,
Assistant Attorney-General.

O

Supreme Court of the United States.

No. 405.—October Term, 1906.

Vuko Perovich, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the Third Division of the Territory of Alaska.

[March 11, 1907.]

Mr. Justice Brewer delivered the opinion of the Court.

On July 17, 1905, Vuko Perovich, now plaintiff in error, was indicted in the United States District Court of Alaska, Third Division, for the murder of Jacob Jaconi. The trial, on August 5, 1905, resulted in a verdict of "guilty of murder in the first degree, and that he suffer death." Motions for a new trial and arrest of judgment having been overruled, he was, on September 15, 1905, sentenced to be hanged. To review that judgment this writ of error was sued out. The record was filed in this court on September 24, 1906, and on application the case was advanced for hearing on January 21, 1907. No counsel appeared for plaintiff in error and no brief was or has been filed in his behalf. The case was submitted by the Government on its brief. Although unaided by counsel for plaintiff in error, we have carefully examined the record and considered the assignments of error.

The testimony in the case was circumstantial. No witness saw the killing. Indeed, the first and principal question is whether there was a homicide. Jaconi was a fisherman, living ~~by himself~~ alone in a log cabin covered by a tent, about midway between Fairbanks and Chena, a distance of about four miles from each place. On October 28, 1904, the last time he was seen alive, he was at Fairbanks between 1 and 2 o'clock in the afternoon, and had in his possession several nuggets, a Yukon gold ring, a gold chain, ~~and~~ watch charm and some money, part of which he deposited in a bank. In the early morning of October 29 the dogs of the deceased were heard barking, and two shots from a gun were heard in the direction of his cabin. On that day about noon one who had been the partner of Jaconi arrived at his camp and found the cabin in which the deceased had lived partially destroyed by fire and the fire still burning. In the rear where the bunk had been he saw the back part of a head, a leg bone and the trunk of a man. The head was sunken on the chest. While the cabin was not totally

destroyed, it was burned more towards the back where the bunk had been, and the ground in the vicinity of the bunk was saturated with oil. It appeared that Jaconi had in his cabin about one and one-half gallons of olive oil. On that day or the next several witnesses were at the cabin and saw the skull and the other parts of the skeleton, still smoking, and the bones so burned that they crumbled to pieces when touched. Some two weeks before the fire the defendant had said to a witness that he was broke but knew where he could get some money if he had a partner to go with him, as there was a man who lived about five miles from Chena who had $500, a watch and chain, a ring and a gun. On October 15 he was at the cabin of Jaconi about daylight. At that time he said to the former partner of Jaconi when asked what he wanted, that he was travelling and looking for a job. On October 20 defendant and a witness went to Chena and on their way stopped at the cabin of Jaconi. After leaving defendant told witness that he had been there several times before, and that the deceased had a roll of money, and that he would lick him with an ax some day and throw him in the water, or that he would make a fire and burn everything up. On October 28, the day on which Jaconi was last seen, the defendant was at Fairbanks, and said he was going to the cabin of one of his countrymen to see if he could find anything in it. On October 29, between half past 3 and 4 o'clock in the afternoon, he arrived at a camp about twenty miles from Chena. He had a rifle and a canvas bag in his possession, a Yukon ring and a gold watch and chain. He made different statements to different witnesses about the watch. On November 5 he was arrested, having in his possession $50 and a gold watch. He said that he traded a nugget chain with two men for a sack of clothes and the watch. Later a sack of clothes was found where he had left it. He said that he and his partner had made the chain, and that he had bought his partner's interest in it. His partner testified that they owned the nugget chain, and that it had never been out of his possession after it was made. Several of these articles and others found in possession of the defendant were identified as the property of Jaconi. Other circumstances of a similar nature were also shown in evidence.

It is assigned for error that the court overruled a motion to instruct the jury to bring in a verdict of not guilty for the reason that the *corpus delicti* had not been proved. This motion was made after the plaintiff had rested, and upon its being overruled the defendant proceeded to offer testimony. The motion was not thereafter renewed. Without resting upon the proposition that introducing testimony after such a motion has been overruled is a waiver of any exception to the action of the court, (*Union Pacific Railway* v. *Daniels*, 152 U. S. 684; *Runkle* v. *Burnham*,

153 U. S. 216; *Hansen* v. *Boyd*, 161 U. S. 397,) we are of the opinion that neither at that time nor at the close of all the testimony would the court have been justified in withdrawing the case from the jury. While it is true there was no witness to the homicide and the identification of the body found in the cabin was not perfect owing to its condition caused by fire, yet, taking all the circumstances together, there was clearly enough to warrant the jury in finding that the partially burned body was that of Jaconi and that he had been killed by the defendant. Upon this question the case of *Commonwealth* v. *Williams*, 171 Mass. 461, is closely in point and instructive. While the particular facts are not identical, the character and scope of the testimony are substantially the same.

Again, it is alleged that there was error in overruling a motion made by defendant to strike out all the testimony given by a deputy marshal of conversations between him and the defendant. As these conversations were not induced by duress, intimidation or other improper influences, but were perfectly voluntary, there is no reason why they should not have been received.

Other matters referred to in the assignment of errors require but slight notice. One is that the court erred in refusing to appoint an interpreter when the defendant was testifying. This is a matter largely resting in the discretion of the trial court, and it does not appear from the answers made by the witness that there was any abuse of such discretion.

Error is also alleged in refusing an instruction as to the evidence necessary to establish the *corpus delicti*. It is enough, in answer to this objection, to refer to the summary of the testimony we have already given and to note the fact that the court instructed that the evidence must be such as to satisfy the jury beyond a reasonable doubt.

The defense asked one or two instructions, such as this: "The fact that Jacob Jaconi has not been seen since the 28th day of October, 1904, does not create a presumption of his death." Singling out a single matter and emphasizing it by special instruction as often tends to mislead as to guide a jury. Doubtless the isolated fact that Jaconi had not been seen would not of itself establish the fact of his death. It is only a circumstance which, taken in connection with the other facts in the case, tends to prove the death. It is merely one link in a long chain, and the court is seldom called upon by special instructions to single out any single link in a chain, and affirm either its strength or weakness. *Grand Trunk Rw. Co.* v. *Ives*, 144 U. S. 408, 433; *Rio Grande Western Rw. Co.* v. *Leak*, 163 U. S. 280, 288.

Objection is made to the instruction in reference to reasonable doubt. This instruction is taken from the charge of Chief Justice Shaw to the

jury in *Commonwealth* v. *Webster*, 5 Cush. 295, 320, and that case has been cited with approval by this court. *Miles* v. *United States*, 103 U. S. 304, 312.

These are all the questions which we deem it necessary to notice, and while we should have been glad to have had the assistance of counsel for plaintiff in error, yet we are satisfied from our examination of the record that the defendant was properly convicted, and the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.